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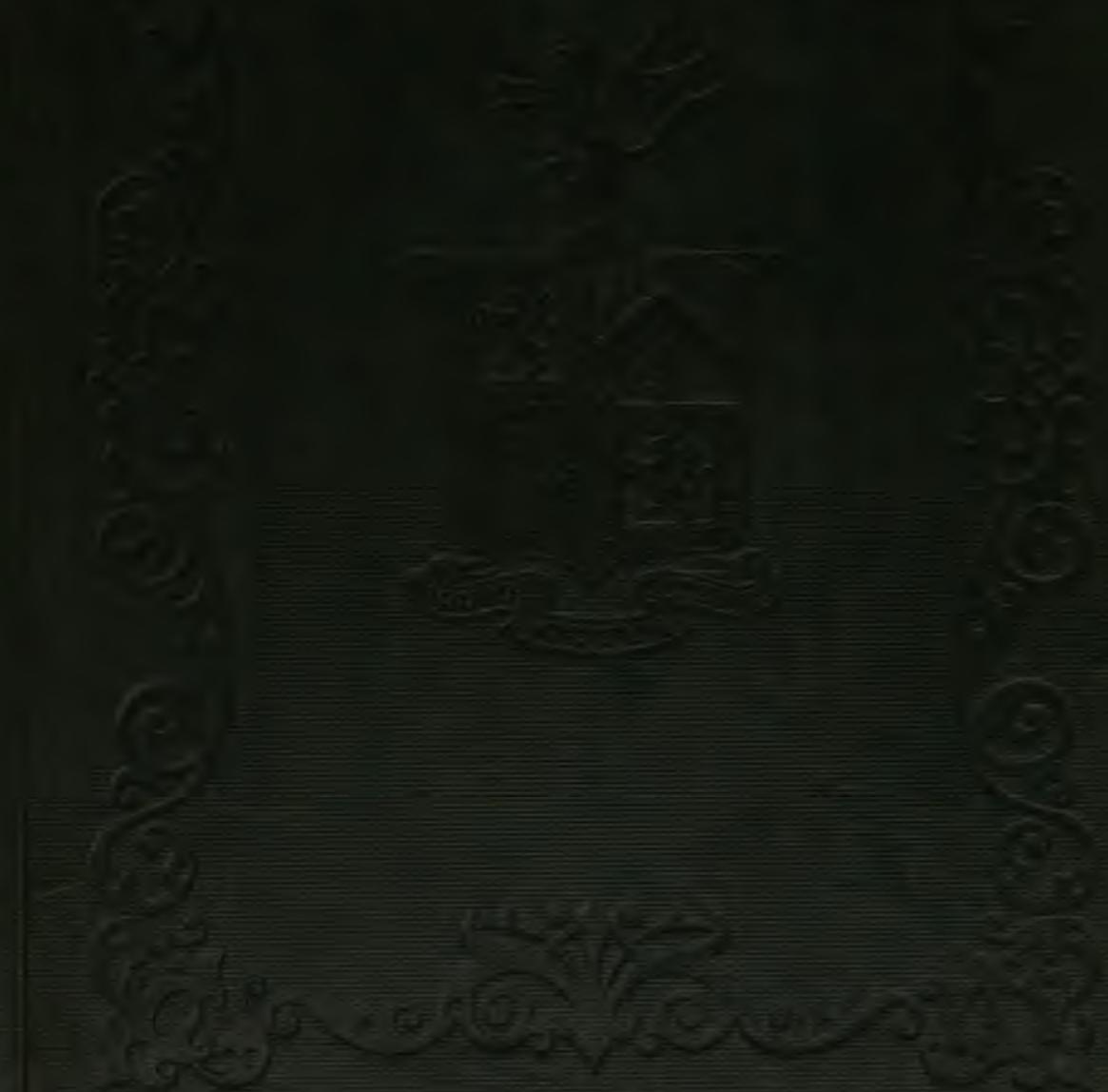
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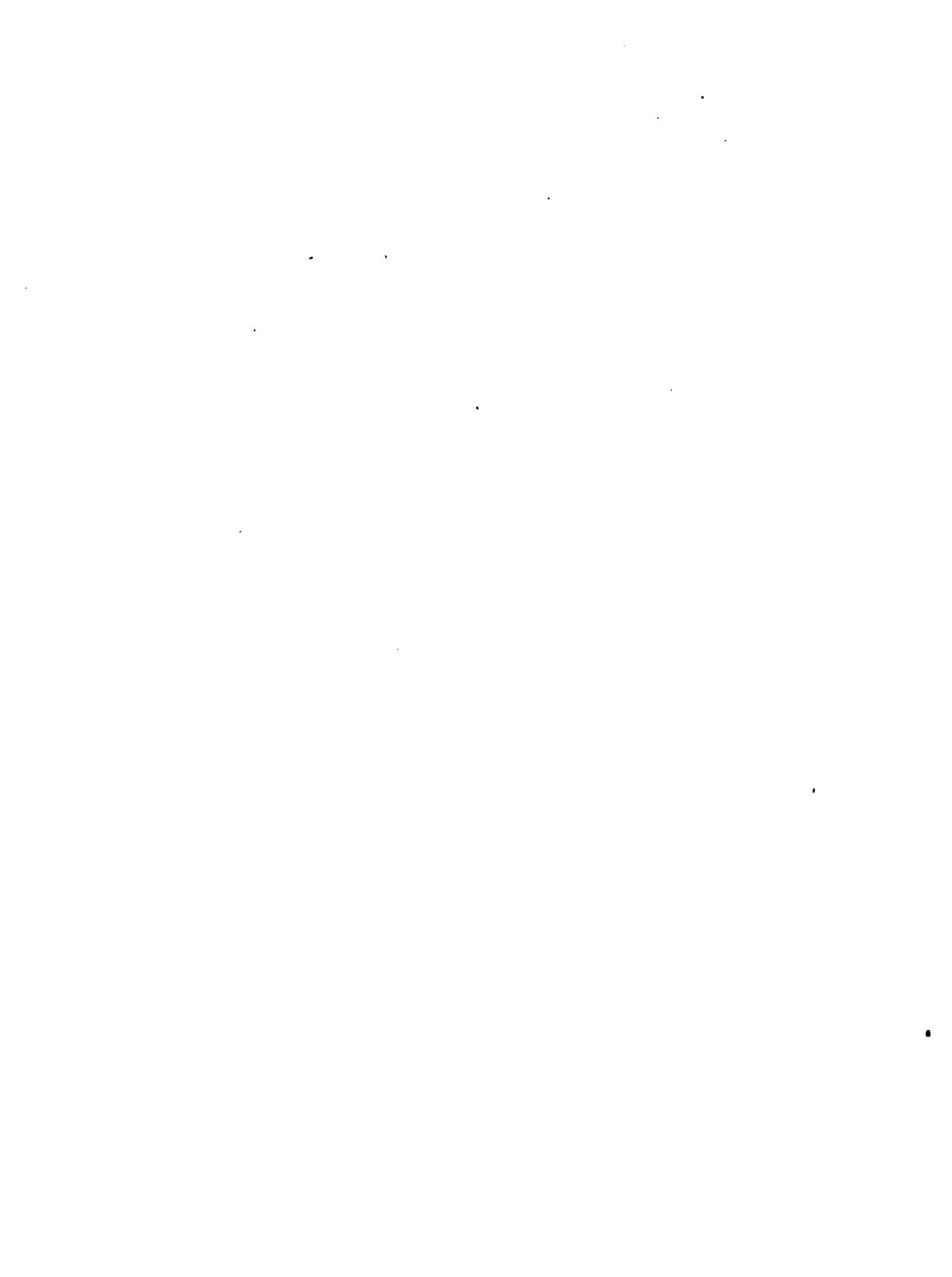


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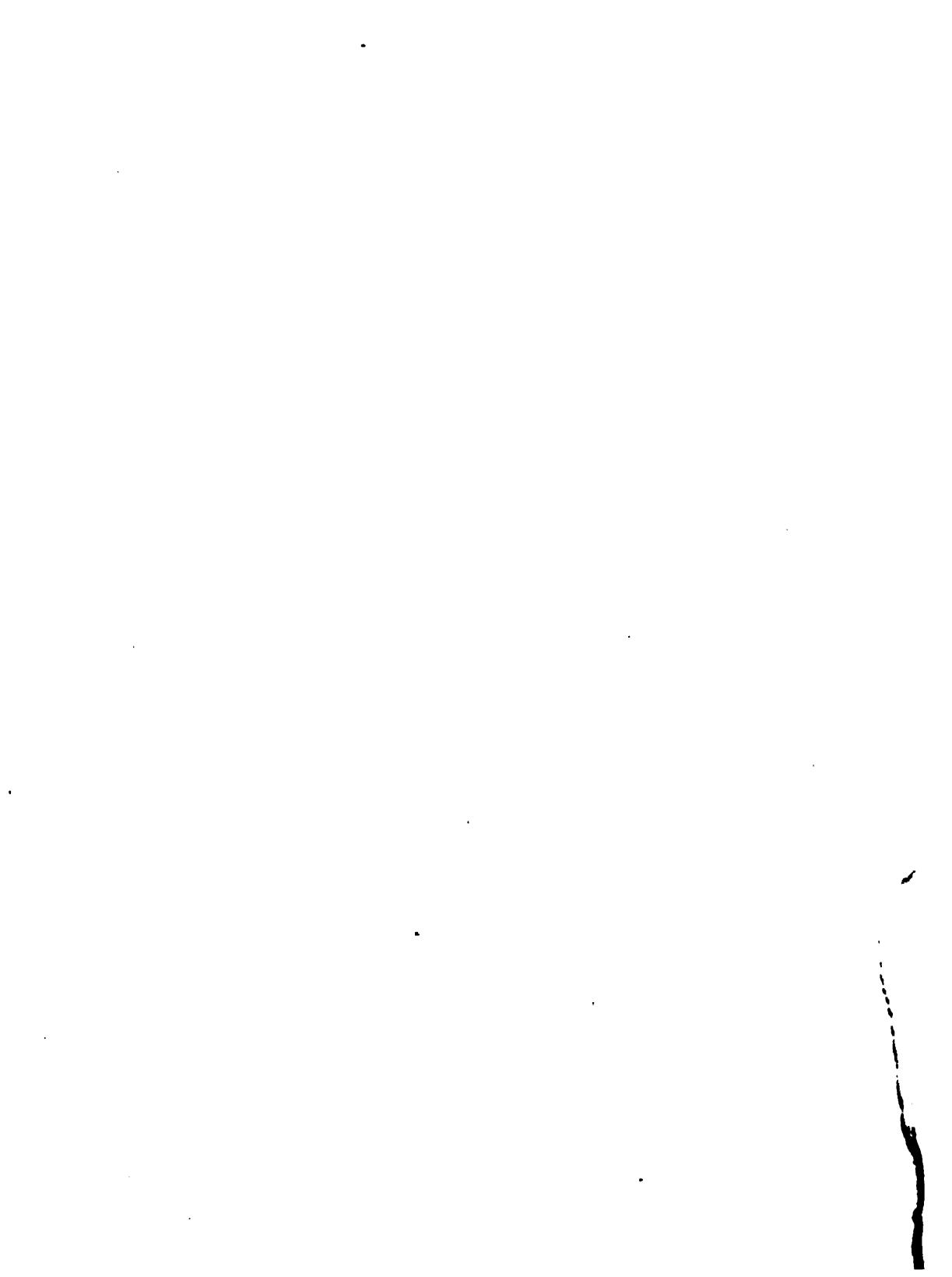
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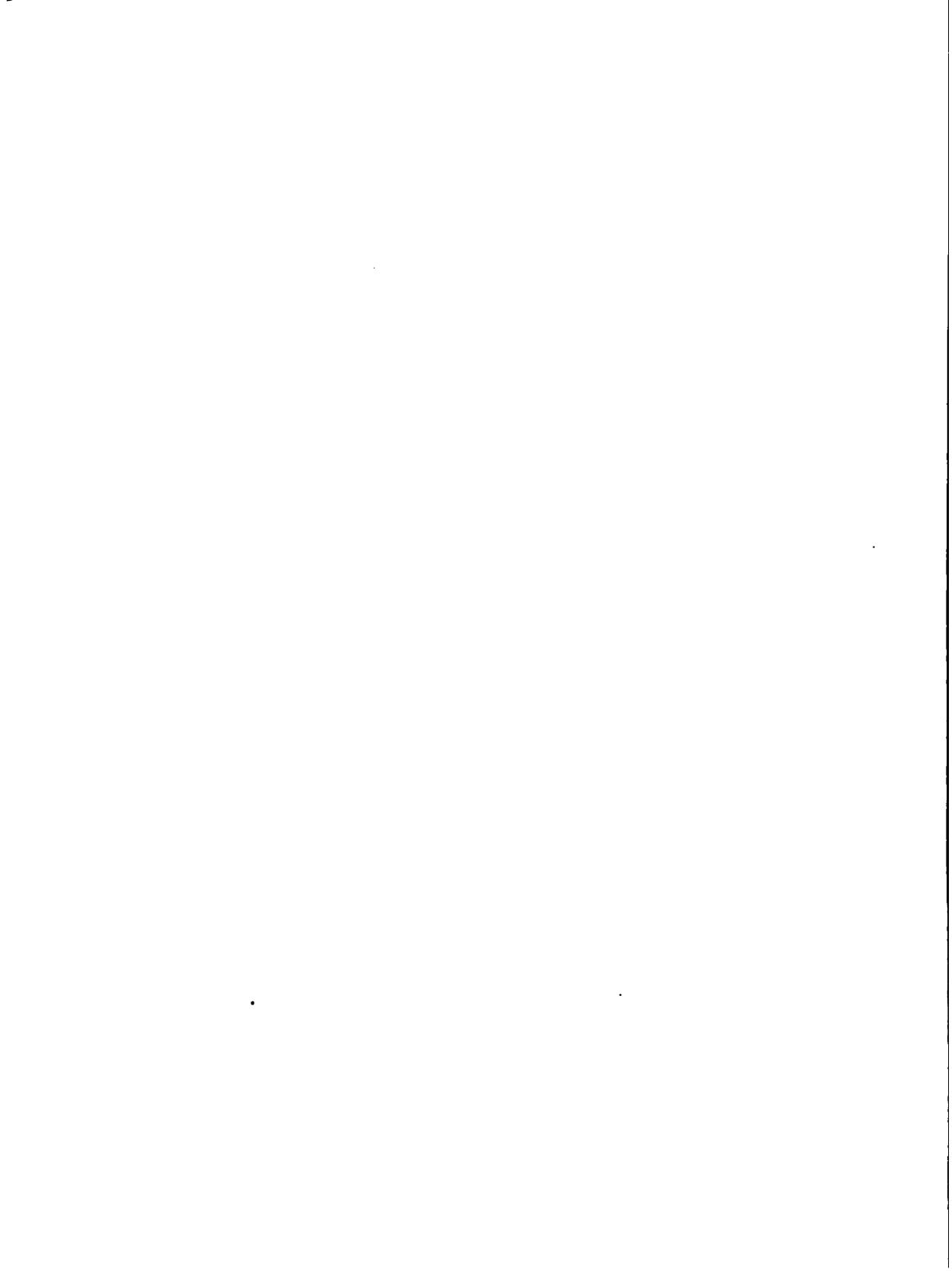






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¹T H E

[A 3, recto.]

P R E F A C E
TO THE
R E A D E R:

I Received on the 13th. of April, 1675. a very strange kind of Book from Sir Thomas Manwaring, then delivered unto me by his Servant; wherein I expected a Book of Arguing to the point of the Controversie between us: But behold a book of Railing, catching (as his usual manner is) at every small impertinent thing.

That I may the sooner come to the Book it self, I shall observe ²only out of his Epistle, this one thing, How he minceth the Truth, [A 3, verso.] in telling the Reader —— that my Servant did (by my Command) signifie unto him in a Letter, that I would write again, and this before Sir Thomas had printed one word of his Reply: So that if he find me thus Stumbling at the first, it is well if he do not take me oft Tripping before I come to my Journeys end.

Whereunto I say, that he deals not clearly in his words, and declareth not the whole Truth: For it is true, that I did command my Servant to write unto him; but what did I command him to write? Was it barely that I would then write again? No: but to let him know, that I had then found some new Precedents which (I conceived) would clear the point between us, and came to my knowledge since I had published my Answer; of which I thought good to give him timely notice, that I would add them to my Answer

[A 4, recto.] already Printed, which ³were omitted therein ; and this before his Reply was Printed, as Sir Thomas here confesseth : This was rather an amendment of my former book, then writing again de novo ; for as yet he had published no book against it, but this part of the Truth he conceals ; and if my Servant writ otherwise than to this effect, I utterly disown it to be written by my command : But before I could get my Addenda Printed, he Published a Reply to my Answer ; wherein were so many Crimes charged upon me, that I was forced to a Vindication of my self, which I did then put into my Addenda, p. 8. and also p. 27.

And whatsoever I have also written more, then what I first intended and declared, I have been forced thereunto in my own defence.

[A 4, verso.] And so I will now briefly come to his Book, and hope to shew clearly who Trips most in the Journey, he or I ; and wherein I do Trip, it ⁴shall be readily confess : I think mine will not be found many, nor material to the main point ; but I believe his will be found Fundamental Errors : And I could wish that Sir Thomas would as freely confess his Trips as I shall confess mine, then the whole busines would soon be at an end.

And herein I shall endeavour all along to avoyd all obloquies, wherewith he aboundeth as much as I can ; for Calumnies and Slanders will find no place among Wise and Good Men, and are ever inconsistent with those excellent Christian Graces of Humility and meekness.

Mobberly,
May the 18th. 1675.



'A Second Reply.

[Page 1.]

Pag. 1. *Of his Answer to my two Books.*



Ere he saith, that I affirm several times, that *Glanvil* saith that Lands may be given with any Woman *in liberum maritagium*: whereas he saith only, they may be given *cum quilibet muliere in maritagium*.

My Reply.

I did, and do yet affirm it; and have proved it too; see pag. 54. of my former Reply, which yet he hath ²not answered: nor do I believe that he can rationally answer my Argument there: For though *Glanvil* hath not these very words — Lands may be given with any Woman *in liberum maritagium*; yet he saith it by Consequence, drawn clearly out of his words, *lib. 7. cap. 18.* which is the same in effect.

[Page 2.]

Nor doth Sir *Thomas* repeat *Glanvil*'s words aright; and yet he is ready upon all occasions to tax me with the like: the words of *Glanvil*, *lib. 7. cap. 1.* are — *quilibet liber homo, terram habens, quandam partem terrae suae cum filiis suis, vel cum aliquo aliud quilibet muliere, potest dare in maritagium... &c.* not barely *cum quilibet muliere*.

Pag. 2. *Of his Answer to my two Books.*

Here he saith, I tell him that I have proved *Geva* to be a Bastard out of an Historian Contemporary; by which *Ordericus Vitalis* is meant, ³and yet *Ordericus* saith no such thing.
 [Page 3.]

My Reply.

'Tis true, I said so, and have proved it too: See my Answer to his Defence of *Amicia*, pag. 34, 35. for though he hath not these very words [*Geva is a Bastard*], yet by sure Consequence it follows out of the words of *Ordericus*, that she was a Bastard, which is all to one effect; and here is another trip of a fallacy in Sir *Thomas*.

Pag. 2. *Of his Answer to my two Books.*

1. Here he also saith, that I affirm the Common Law is now altered otherwise than by Act of Parliament, without quoting any Author.

2. And also that I brag of several Precedents where Lands were given in free Marriage with Bastards; and yet I prove not these necessary words of *liberum marita-⁴gium* (as the Lord *Cook* calls them) were used in any of those grants, or that any of those Persons, with whom such Lands were given, were Bastards.
 [Page 4.]

My Reply.

Here is another Trip of Sir *Thomas*; for I have quoted the Lord *Cook* himself in several Cases for it: See my Answer to his Defence of *Amicia*, pag. 23, 24, 25, 26. and yet he is not ashamed to say here, I quoted no Author for it: And I could yet produce a number of Cases more, wherein the Law is altered without any Act of Parliament, if it were necessary.

2. To the Second: I produced those ancient precedents to

show, that those words [*in liberum maritagium*] were not anciently so necessary in grants of free Marriage, as the Lord *Cook* would now have them to be ; and then Sir *Thomas* faith, that I have not proved any of those Persons with whom such Lands were given (in free Marri-⁵age) were Bastards : *Sit liber judex*, as to that of *Geva* : See also my former Reply, pag. 38. where *Joan Prince's of Wales* is clearly proved to be a Bastard by the Testimony of most of our Historians ; but none saying she was a lawful Daughter, and that she had Lands given her in free Marriage by King *John* her Father : See my Advertisement to the Reader, at the end of my two said Books ; also my *Addenda*, pag. 3, 4. and my former Reply, pag. 25.

[Page 5.]

Pag. 3. *Of his Answer to my two Books.*

Here he faith, I tell him *Lewellyn Prince of North-Wales* was Divorced from his Wife *Joan*, for which I can neither shew Author, nor Record.

My Reply.

I do not positively affirm it : the words in my former Reply, pag. 44, ⁶are these — if she were Re-married to *Audley*, anno 14. *Hen.* 3. then it is a sure Argument that she was Divorced ; and whether she was so Married or no, 14. *Hen.* 3. let the Record Vouched by *Vincent*, be the Judge.

[Page 6.]

Here is another Trip of Sir *Thomas* ; for he faith, that I can neither shew Author, nor Record : indeed *Vincent* doth not say she was Divorced ; but he faith, she was Re-married to *Audley* ; and so by consequence she must needs be Divorced, *Lewellyn* being then alive.

But I have now published an Advertisement to the Reader at the end of my two said Books, where I have set forth the Copy of that Record ; and do find that *Vincent* hath clearly mistaken the Record ; for it proves *Robert de Audley* did Marry *Joan*,

Daughter of *Richard de Lande*, but nothing at all of any Marriage with *Joan Princess of Wales*.

[Page 7.]

Yet nothing hinders, but she ⁷ might have been Divorced from *Lewellyn*, being taken in Adultery with *William de Brews*; and if Sir *Thomas* will allow the Note of Dr. *Powel* to be Authenticall herein, pag. 315. of his Notes upon the Welsh-History, *Lewellyn* had another Wife after *Joan*, called *Eva*, Daughter of *Fouk de Breant*, but had no Issue by her, as he saith; which could not be without a Divorce, unles we suppose *Lewellyn* Married after the death of *Joan*, for he survived not *Joan* above two or three years; and then we find him Diseased with the Palsey, and in a dying condition, anno 1237. See *Mat. Paris*, pag. 437. and therefore probably, if he were so Re-married at all, it was before that declining state of his: But yet *I* will not positively affirm that *Joan* was Divorced.

Pag. 3. *Of his Answer ibidem.*

[Page 8.]

Here he saith, *I* have a fine way of Answering; for if *I* be prest o⁻⁸ver-much with any point of Law, then *I* will tell you of my own Authority, that the Law in such Particulars is clearly altered, though *I* cannot tell how, nor at what time.

2. If it be a Record that puts me too hard to it, then *I* conceive the Roll from whence the Deed is written, is mistaken in such and such words, and miswrit therein from the Original.

3. If out of any History you tell me any thing which *I* cannot Answer, then *I* will not suffer the words to be read as they ought to be Printed; but *I* will fansie such expressions as will best suit with my turn, and also disparage the same History, although in those matters *I* had formerly said *I* did chiefly follow the same.

My Reply.

These are all nothing but Cavils; and whence these proceed, every man may judge.

1. Where do *I* say the Law is alter'd on my own Authority, and do not prove it by other Authority? it is his mistake, and though *I* cannot tell when precisely, nor perhaps others neither, yet it is plain such particulars are altered, and such alterations are not made in a day, nor all at a time; for they must have a long time of common practice through the Nation, before it become a common Law; and at last becomes a Law by general consent and practice by degrees.

[Page 9.]

2. *I* never say the Roll is mistaken, but where it is mistaken; and *I* remember not that *I* say any Roll or Record at all is mistaken, save either that of (*Donarium*) which *I* conceived was mis-writ for (*Dotarium*); and it is ill chid of Sir *Thomas* (as we say Proverbially) when he himself conceives (*Donarium*) to be there mis-writ for (*Dovarium*) pag. 13. or else that of *Bacon's* Deed: See my Reasons in my *Addenda*, pag. 23. for rectification of which, *I* was promised a sight of the Original, but *I* could not obtain it.

¹⁰3. The third is also a great mistake: for first, I have not seen any thing out of any History alledged, but what I have fully answered, as to the point in difference; nor do I hinder any words to be read as they ought to be Printed; but when there be plain errors in the Printing, and so proved to be errors by comparing sundry other good Authors to the contrary, as (*Hugh*) Earl of *Chester*, for (*Randle*) Earl of *Chester* in the Welsh History, *sub anno* 1142. why may not I observe the error which Sir *Thomas* would boulster up by an erroneous Amendment, to ground several other gross errors and mistakes thereupon? It is most certainly a gross mistake either in the Printer or the Copy; and not mistaken for (*Hugh*, Son to the Earl of *Chester*), but for (*Randle* Earl of *Chester*):

[Page 10.]

And then to say I disparage the Welsh History, or Dr. *Powel*, is another mis-judging of me: all I said was this—The Welsh History is not exactly composed throughout, "nor proved by good Authority; and as I believe it true in many things, so it hath some grosse mistakes; and so are some of Dr. Powels Notes

[Page 11.]

thereon full of errors, especially in his absurd Pedegree of the Earls of *Chester*, and in several other things: See my former Reply, *pa. 94.* And I believe every knowing man (who hath perused the same) will say as much: indeed there are few general Histories but may have some mistakes, and without disparagement too to the Author.

Certainly, here are three or four extraordinary Trips of Sir *Thomas*.

Now there is nothing material here, further to be taken notice of, till we come to his ninth page.

Pag. 9. *Of his Answer to my two Books.*

[Page 12.] Here Sir *Thomas* saith that I misrecite his Argument; and that I say, that the Lord *Cook* saith those words [*in liberum matrarium*] are such words of art, and so necessarily ¹²required, as they cannot be (understood) by words equipollent: so hard it is to get Sir *Peter* either to repeat or understand aright.

My Reply.

Parturiunt montes, nascetur ridiculus mus: He saith, it is a hard matter to get me repeat aright; but for the repeating of those very words of the Lord *Cook*; see Sir *Thomas Manwarings* Law-Cases mistaken, *pag. 3.* *pag. 10.* and *pag. 14.* in all which places I have repeated them aright: So it is no hard matter to get me repeat aright; but here indeed the word (understood) is mis-writ for (exprest) *pag. 4.* of my former Reply; which shews it self to be a mistake in the writing; and the very fence here, would guide a man of reason into a rectification; but Sir *Thomas* will play at small game before he sit out.

And then he saith, I understand not aright: why so? Because I do not say — by words equipollent, or amounting to as much.

[Page 13.] ¹³Oh profound and material point! as though equipollent, or

amounting to as much, were not the same thing ; or that there were more in the words (amounting to as much) than in the word (Equipollent) : let him shew me the difference between them, if he can ; fave only one is a Lattin word, and the other English : so that when I had named the one, the other were not needful to be named.

Pag. 10. *Of his Answer to my two Books.*

Here he saith, *I* mistake very much when *I* say — that Lands given in *maritagium*; *Habendum libere & quiete ab omni servitio versus Capitalem Dominum, de me & haeredibus meis, ... &c.* was a good grant in free Marriage, by the words of *Glanvil* in those Ages, and as good as *in liberum maritagium*): Why so ? because *Glanvil* doth not there or any where else, say that Lands may be given in free Marri-¹⁴age by those, or any other equipollent words, without using the words [*in liberum maritagium*]: and unless he saith this, he saith nothing for Sir *Peter*'s purpose.

[Page 14.]

My Reply.

For this see pag. 54. of my former Reply, where *I* have proved it out of *Glanvils* words by sure consequence, which Sir *Thomas* hath not yet answered: *Sit Liber Index. Glanvil, lib. 7. cap. 18.*

'Tis true, those very words here mentioned by Sir *Thomas*, are not in *Glanvil*; but Lands granted *in maritagium*, free from all Service, &c. (saith *Glanvil*) was a grant in free Marriage ; and by sure consequence implied there out of *Glanvil*, to be words answerable to the words (*in liberum maritagium*), which makes clearly for Sir *Peter*'s purpose against Sir *Thomas*; for such a grant (saith *Glanvil*) was a grant in free Marriage, without telling us that the words (*in liberum maritagium*) must be ne-¹⁵cessarily used at all : So that Sir *Thomas* mistakes himself here very much, and not *I*.

[Page 15.]

Pag. 12, 13. *Of his Answer to my two Books.*

Here he writeth down *Saler de Quencyes* Deed, out of my Historical Antiquities.

In which Deed (faith he, pag. 13.) if *Donarium* were there mis-written for (*Dotarium*), it would not here signifie Marriage, but Dower; and he thinks also that the Transcriber probably did mistake (*Donarium*) for *Dovarium*; the *n* and *u* being anciently written alike: but he faith also, he got a friend carefully to examine the same in one of the Couchir-books in the Dutchy Office in *Grays-Inn*, and the word is there *Donarium*, without any mistake at all.

[Page 16.]

¹⁶ *My Reply.*

It is true, I did interpret *in liberum Donarium* in that Deed, as meant of a Jointure in my Historical Antiquities, pag. 132. but upon better consideration I conceived it might be more properly interpreted here, and understood for free-marriage; in my former Reply, pag. 7, 8. and in my Book, stiled *Sir Thomas Manwarings Law-Cases Mistaken*, pag. 29. for finding *Dos* sometimes anciently taken for Marriage, and finding the word (*liberum*) added here unto it, I did conjecture it might have been mis-written in my Copy *in liberum Donarium*, for *in liberum Dotarium*: and so all one as to have said *in liberum maritagium*; and the rather for that we find very rarely the word *in liberum donarium* so applyed; nor do we usually say Lands are given in free Joynture, but in free Marriage.

[Page 17.]

¹⁷ But now it being in the Couchir-book, *in liberum Donarium* without mistake, as Sir *Thomas* tells us, he got a Friend to examine it, it must needs be here interpreted for a free gift: for *Saler de Quency* Earl of *Winchester*, grants to *Robert de Quency* his Son and Heir four Mannours, *ad dandum in liberum Donarium Hawisæ Sorori Comitis Cestriæ, uxori ejusdem Roberti.*

This was soon after the Marriage ; for she was now the Wife of *Robert*, and these Lands were given for a free gift to *Hawise* his Wife, which is all one as to have said for a free gift in Marriage to *Hawise*; and a free gift in Marriage is all one as a gift in Free-marriage : add hereunto, that those four Mannors, given in *liberum donarium*, as aforesaid, accrued to the Heires of *Hawise*, to wit, to *John Lacy*, Earl of *Lincoln*, in right of *Margaret* his Wife, Daughter and Heir of the said *Robert Quency* & *Hawise*: which by Law ought to descend upon the Heirs of *Hawise*, being given ¹⁸in free marriage : Whereunto also *Roger de Quency* (who succeeded Earl of *Winchester*, upon the death of the aforesaid *Robert de Quency*, his Elder Brother without Issue Male) released all his Right unto the Heirs of the said *Margaret*: See my Historical Antiquities, pag. 271. whereas had those Lands been given to *Hawise* in Dower or Joynure only, she could but have enjoyed them for her life, and not to her Heirs.

[Page 18.]

But whether is the more proper interpretation thereof in this place, let Learned men judge ; I will not contend about it. Yet whereas pag. 15. Sir *Thomas* would have the Reader to judge of my Integrity, because I did formerly interpret the words aforesaid to be understood of a Joynure, and now upon more serious deliberation conceive the same to be meant for a gift in free marriage, or a free gift in marriage, having the word *liberum* joyned with it : I say it is hard to censure my integrity for it : for that is ¹⁹well known to all the County where we both do live ; I shall make no comparissons, for those are odious, and favor of arrogancy.

[Page 19.]

Again, Sir *Thomas* hath committed another Trip, pag. 10. where he expoundeth Mr. *Glanvils* words (when he speaketh of gifts in frank-marriage) *cum aliquâ muliere* to be meant [with some woman]: which words he misinterpreteth altogether; for it is there meant [with any Woman] not with some Woman : He hath the same error in his Reply to my Answer, pag. 40.

Pag. 16, 17. *Of his Anfwer to my two Books.*

[Page 20.]

Here he saith, I tell him how he proves by comparing the Age of *Bertred*, that *Agatha* could not be the Daughter of the Second *William de Ferrare*; wherein (faith he) I am pittifully mistaken, for he did goe about no such thing; but he did shew pag. 3, 4, 5. that *Joane*, Wife ²⁰ of *Lewellyn* could not be the same *Joan* which King *John* had by *Agatha*.

My Reply.

O pretty Subterfuge! hath he any proof at all here, that *Joan*, Wife of *Lewellyn* was not the same *Joan* which King *John* had by *Agatha*; but all his proof there bottomed on the Age of *Bertred*, which could not allow *Agatha* to be the Daughter of the Second *William de Ferrars* by *Bertred's* Daughter; so as to suppose *Agatha* to be old enough to have Issue that *Joan* by King *John*, and that *Joan* to be old enough to be Wife of *Lewellyn*, Anno. 1204. which is a false ground taken from *Vincent*: but *Speed* faith, *Agatha* was Daughter of *Robert de Ferrars*, and I agree *Vincent* to be mistaken therein: Let me see him prove the Princefs of *Wales* to be no Daughter of *Agatha* by King *John*; what he saith here, is nothing to the purpose: See my former Reply, p. 18.

[Page 21.]

²¹ Pag. 22. *Of his Anfwer to my two Books.*

Here (after a long Oration, nothing at all material) he tells us—would any man think Sir *Peter* himself within a very few lines would be guilty of the like offence, which I unjustly charged him withal? and a little after—Sir *Peter* would distinguish between *maritagium*, and *maritagium Servitio obnoxium*; and say *maritagium* is two-fold, but doth not give the members of his distinction aright.

My Reply.

Here are two great Trips more of Sir *Thomas*, for I did neither charge him unjustly with that distinction, which any man may read in his book, nor am I guilty of the like offence, as he faith I am : Shew me, if he can, where I go about any such a distinction as he here mentioneth, or say marriage ²²is two-fold, and then give the members of my distinction so absurdly as he there hath done ; I wonder he is so disingenious either to deny the one or affirm the other : See his Answer to my Addenda, pag. 7. and my former Reply thereunto, pag. 20, 21. I appeal to all Readers ; and yet in the 19th. pag. of his Answer to my two books, he tells us, it is the want of my understanding which caufeth me to blame him for what he there so faith, and then runs on in a long harangue to no purpose, telling us that *maritagium Servitio obnoxium* is the Elder Brother... &c.

[Page 22.]

Pag. 24. *Of his Answer to my two Books.*

Here he faith, that I indeed do tell him that those Mannors (*Budiford & Sutchele*) were given to the said *Lewellyn in libero maritagio*: But the Deed lately belonging to *Somerford Oldfield Esquire* doth prove no such thing, but doth only ²³prove that the said *Lewellyn* did mistake himself, and did think that they were given him in free-marriage, when they were not so given.

[Page 23.]

My Reply.

Oh fine, a pretty Answer indeed ! for though in the Deed it be said — *Sicut Dominus Johannes Rex ea illi dedit in libero maritagio*] yet here (faith Sir *Thomas*) *Lewellyn* mistakes himself, and thought it was so given, when it was not : it is not in the Deed (*mihi dedit*) but (*illi dedit*), and by consequence could not be mistaken by *Lewellyn* only, if it were mistaken ; but by all others also then present, and especially by the Writer of the said

[Page 24.]

Deed: But whether was *Lewellyn*, and the Clerk that made the Deed, and all others then present, more like to know the truth hereof, than Sir *Thomas* now living 450. years after that Deed made: Every man may see the weaknes of this Answere. Sure this may stand for a ²⁴Trip with a derry-down, but he hath so many of them, that I shall forget to count them all. Ere while *pag. 3.* when I am put hard to it, (faith he) then I say the Roll is mis-writ: Very well; but here he denys the very words of the Deed, and avers against a Record, and yet gives no reason for it neither.

What follows *pag. 26, 27, 28, 29.* are all tedious things according to his custom, and little or nothing to the point.

But *pag. 26.* and in other places else-where, when any thing is said by him, either not true, or not to the point, then it is my ignorance that runs me upon mistakes, that I cannot fathom what he or the Lawyers do say.

1. He saith, *pag. 26.* that if a man have Land given in free marriage with a Wife, he hath only *Custodiam terræ cum uxore*, and therefore cannot dispose of those Lands to any Person from the right Heir.

[Page 25.] 2. So *pag. 28, 29.* he tells us that the Writ for the Livery of *Budiford* ²⁵to *Lewellyn* runs in these words, — *quod Johannes Rex ei dedit in maritagium cum Johanna, &c.* and (faith he) Livery would be needless in a gift of free-marriage, and therefore concludes, it must be only *in maritagio* given, not *in libero maritagio*; and so *Lewellyn's* Deed to *John Scot* is mistaken; and be it what it will, it will work nothing in this case.

My Reply.

1. To the first: For what he saith, that according to the ancient Lawyers in those elder Ages, that Lands given with a Wife in free-marriage to a man, the Husband hath only the custody of such Lands with his Wife, and therefore cannot dispose of any of those Lands to any person from the right Heir by such a Wife.

Yet we see here, that *Lewellyn* did grant away *de facto* to *John the Scot, Budiford* in free-marriage with *Helen* his Daughter, about ²⁶ 1222. which Lands King *John* gave unto him in free-marriage, with *Joan* his Daughter, Mother of the said *Helen*, by what right we cannot now tell, whether by the consent of the right Heir by *Joan*, or other compensation else-where given; but certainly it was so given, and *Helen* was right Heir to her Mother *Joan*, after the death of *David* her Brother, without Issue.

[Page 26.]

2. To the second: As to the Writ of Livery concerning *Budiford*, running only in *maritagium*; it hinders nothing but that the grant to *Lewellyn* of *Budiford* might be in *libero maritagio*; as we see that of the Castle of *Ellesmere*, granted also to *Lewellyn* by King *John*, with his said Daughter *Joan* in *libero maritagio*, by express words: See the Deed at large in my Advertisement to the Reader, at the end of my Book, stiled Sir *Thomas Manwarings Law-Cases Mistaken*; and yet the Livery of *Ellesmere* faith only — *quod dedimus dilecto filio nostro Lewelino in maritagio filiae nostrae*: See Sir *Thomas Manwarings Answer to my Addenda*, pag. 6. Now *maritagio* doth as well include free-marriage, as not free-marriage, according as the Deed runneth.

[Page 27.]

Pag. 30. *Of his Answer to my two Books.*

Here he saith, he thinks he can make good what he said of my Partiality (which yet he will not speak publickly) and that I will not be excused by that contradiction of mine; to wit, That admit I were never so much partial in what he chargeth me with (yet I hope what I have written, he finds it impartial to all, so far as I go or know) would this cure his uncivil expressions towards me in another thing? but he leaves out these last words of mine.

²⁸ *My Reply.*

[Page 28.]

Let him find out a contradiction here if he can; but all his

shifts and cavils cannot prevail to cover the truth concerning *Amicia*, and which with all his art he cannot solidly refute. So having done with this Trip, I proceed to the rest.

Pag. 32, 33. *Of his Answer to my two Books.*

Now he would fain justifie a former error of his, and shews me a Deed out of my own Book, pag. 143. (from which Book he fetcheth many things, but nothing will help his cause.) In which Deed, *Randal*, Duke of *Brittain*, & Earl of *Chester* granted to *Andrew*, Son of *Mabil*, & to his Heirs, sundry liberties, &c. among which, it is there said — *nec de querelâ aliquâ in civitate Cestriæ, vel extrâ, respondeant in præsentia meâ, vel summi, Justitiæ mei*:* upon which he puts in the Margent a ²⁹special mark thus (* Note): and after he faith, Now let any Person judge whether there was not a chief Justice of *Chester* in those Elder Ages.

[Page 29.] But before pag. 32. he tells us most learnedly, that the word *Justitia* here, is of the *Masculine Gender*, and gives us a rule out of the *Grammer* for it —

Mascula nomina in a dicuntur multa Virorum, and was sometimes in those Elder Ages used for the Judge or Justice of *Chester*, which he believes I cannot deny.

My Reply.

No indeed, I cannot deny it; but why used for the Judge or Justice of *Chester*, more than other Judges in those Ages? Surely it was Anciently used for any of our Judges: *Glanvil* mentioning the form of Original Writs, hath it thus — *quod fit coram me vel Justitiis meis*: So also *Hoveden*, and other of our ancient Historians used ³⁰*Capitalis Justitia Anglie* for the chief Justice of *England*: But *Braeton* compiling a Book of the body of our Law in Latin, under King *Henry* the third, he changed the word (*Justitiis*) into (*Justiciariis*); and setteth down the writs

accordingly—*coram Justiciariis nostris*: Since which time, in all Writs and Commissions upon Record, they have been stiled *Justiciarij*: Lamberds Eirenarcha, *lib. i. cap. i.*

And then for his profound Observation, that *Justitia* is here of the Masculine Gender according to the Rule—

Mascula nomina in (a) dicuntur multa virorum. Yet he hath left out three or four of the next words following, which might fitly have been added to that book of his—*Ut scriba, affecta, scurra, & rabula*. But now for the words of the Deed: It is certain, that here Earl *Randle* calls the Judge of *Chester*—my chief Justice; and the words of the Deed before-mentioned, I con-³¹ceive runs thus in *English*—That the said *Andrew* and his Heirs should not Answer concerning any Suit (or Complaint) entered in the City of *Chester*, or without, either in my presence, or in the presence of my chief Justice.

[Page 31.]

And it is a rare precedent (without a Parallel, I believe in this kind) that the Earl here calleth him—my chief Justice; undoubtedly for some reason here intended, and but accidentally neither; possibly in distinction from the Judges of his inferior Courts: for certainly they were never called chief Justices of *Chester* in those Ages by common appellation, as at this day they be called; neither then were there more Judges of *Chester* than one at a time, nor doth this example prove it otherwise, nor is the Judge here stiled—Chief Justice of *Chester*; only the Earl here calls him—my Chief Justice, speaking as it were in his own person; nor will this at all excuse the error and vain glory of Sir *Thomas*, speaking ³²so of *Rafe Manwaring*, and calling him as at this day we call the Senior Judge of *Chester*; it was a Trip, it overslipt him; but he will seldom acknowledge any error.

[Page 32.]

Again, This Deed was made between the year 1188. and 1200. for all that while *Randle*, Earl of *Chester* assumed the Title of Duke of *Little-Brittain* in *France*, which Title we see he had given to him in this Deed: But it cannot be firmly collected

that *Ralf Manwaring* was Judge of *Chester* at that very time when this Deed was made; for he is there subscribed by the name of *Ralf Manwaring* only, not stiled *Radulfo Manwaring Justiciario Cestriæ* there, as he is in many other Deeds, and as he and all others were usually stiled, while they were Judges; and what Sir *Thomas* would stretch to have it so out of my Historical Antiquities, it will not certainly follow out of my Notes that *Ralf Manwaring* was Judge of *Chester* all that time, from [Page 33.] 1188. till *Philip Orreby* was Judge there; ³³ nor especially all the time, while *Randle* was Duke of *Brittain*; and therefore Sir *Thomas* cannot certainly conclude (as he doth *pag. 34.*) that *Rafe Manwaring* was Judge at that very time, when that Deed was made.

Pag. 35. to *pag. 41.* are things not worthy my taking notice of, nor pertinent to the main point, and have all formerly in my other books been Answered by me over and over again, and therefore I shall here pass them by; although, if I would cavil (as Sir *Thomas* doth) at every pidling thing, I could find many errors therein.

Pag. 43. Of his Answer to my two Books.

Here he faith, he is very confident Sir *Peter* cannot prove, that persons who were under age, did then use to joyn with their Mothers, and to give away their Lands of inheritance.

[Page 34.] ³⁴ 2. And then after a long harangue, and writing down of Mr. *Selden's* words, which I had before cited, he faith *pag. 45.* (which is all the Answer he gives to my Precedent that is material) that Earl *Richard* confirmed the Hyde of Land which *Droco de Andeleia* had given to *Abbington-Church*; and a little after, addeth—what is this to the Case of *Hugh Cyvelies*, who did pass away *Stivinghale* to the Bishop of *Chester*, and his Successors for ever?

My Reply.

I say it is the very self-same Case, one as the other : for Earl *Richard*, and Earl *Hugh* do both joyn with their respective Mothers, both under Age ; but now forsooth the difference he would put is this, that the one confirms another man's grant, the other grants away certain Lands for ever. I would fain know if a grant of Lands for ever by one under Age, and joyning with his ³⁵Mother, be invalid ; why a confirmation of Lands, by one under age also, and joyning with his Mother, would not be invalid likewise ; but this confirmation of Lands for ever held firm, and the Lands continued to the Church of *Abbington* accordingly.

[Page 35.]

So we see how he doubts not but what is there said, will give all men satisfaction, without rendring any Reason at all of the difference in those two Cases.

And I am very confident Earl *Hugh* could not be twelve years old when he joyned with his Mother in the grant of *Stivinghale*; and if the grant were made about the year 1156. to wit, about two or three years after his Fathers death, I rather think that Earl *Hugh* was not above eight years old when he joyned in that Grant.

But certainly Sir *Thomas* is far wide when he saith, pag. 45. that Earl *Hugh* was old enough to take *Melyneneth-Castle*, anno. 1142. or that he was 23. years old, Anno ³⁶1153. in which year his Father dyed : most absurd, and without any ground at all.

[Page 36.]

But since I writ this second Reply, I have received a sure Record that proves Earl *Hugh* could not be above three or four years old at the death of his Father, Anno 1153. and will lay asleep for ever all those false suppositions of Earl *Hugh*'s Age ; whereof see more in my *Peroratio ad Lectorem* at the end of this my second Reply.

Pag. 46. *Of his Answer to my two Books.*

Here he tells the Reader, that I gave him a Pedegree of the

Barons *de Monte alto*: In which I make the first *Robert de Monte alto* (who I said lived in King *Stephen's* time) to have Issue, two Sons, *Rafe* and *Robert*, who were afterwards successively Stewards of *Chefshire*; all which (faith he) is certainly true: [I could wish
[Page 37.] he would as ingeniously confess all other truths al-³⁷ledged by me]; and then he writeth out a Deed of *Hugh Cyvelioc*, Earl of *Chester*, out of my Historical Antiquities; whereunto *Robertus Dapifer de Monte-alto* was a Witnes.

1. And then pag. 48. he faith, this must needs be the first *Robert de Monte-alto*; and if this Deed of Earl *Hugh* was made immediately before the death of this *Robert*, then Earl *Hugh* was a great deal elder than his Wife *Bertred*: (why so?) For (faith he) though the said *Robert* did live something longer than Sir *Peter* doth take notice of, yet he thinks it cannot be proved that he was living any considerable time after *Eustace* (who was Witnes to the Grant of *Stivinghale*): and he knows no reason why we should conclude *Eustace* was slain immediately after he was a Witnes to the other Deed, or that this *Robert* dyed presently after he was a Witnes to this Deed.

2. He faith, pag. 49. that he thinks it will appear that this Deed ³⁸was made in King *Stephen's* time; for had it been made when *Henry* the Second was King, it would not have been here said — *sicut fuit tempore Henrici Regis*; but *sicut fuit tempore Henrici Primi*; or else here would have been some other words used, to distinguish King *Henry* the first from the then King.

Pag. 49. Now King *Stephen* dying, 1154. and *Bertred* not born till 1157. it will from this Deed be clear, that if the said *Hugh* had sealed the other Deed immediately before King *Stephen* dyed, yet Earl *Hugh* would be at the least 24 years older than *Bertred* his Wife.

My Reply.

Is not here a long Prose of his running all upon ifs and ands, without the least ground of truth?

1. To the first: I do remember that I have seen some proof that the first *Robert de Monte-alto* (as he calls him) was living 17.

Stephani: ³⁹what then? why should we conclude (saith he) that *Eustace* was slain immediately after he was a Witness to the one Deed, or that *Robert* dyed presently after he was a Witness to this other Deed?

[Page 39.]

Is not here pittiful weak reasons to bottom on? we find *Eustace* slain *Anno. 1157*. So *Stow*, and other Historians: as to *Robert de Monte-alto* aforesaid, *I* conceive he survived *Hugh Cyvelioc*: *I* have not yet seen any thing to induce me to think he dyed before Earl *Hugh*; and this Deed of Earl *Hugh* to the Nuns of *Bolinton*, *I* believe was made far in the Raign of King *Henry* the Second, nor can he give any reason at all to the contrary, and we find not *Rafe de Monte-alto* a Witness, till *Randle Blundevil's* time, and that must be either in King *Richard* the First's Raign, or towards the very end of *Henry* the Second at soonest.

2. To the second: Let him prove this Deed to be made in King *Stephen's* time, and *I* will burn my ⁴⁰book: as to his reason of distinguishing of one King *Henry* from another, how many times do we find mention of the *Henry's* in old Charters, without distinguishing at all? Somtimes they are distinguished, and sometimes not; but not adding the word of *Henrici Regis nunc*, shews clearly it is meant of *Hen. 1.*

[Page 40.]

3. To the third: As he proves nothing from the Deed, nor when it was made, so his ifs signifie nothing; for Earl *Hugh* was certainly a Child under age, when he joyned with his Mother in the Deed of *Stivinghale*.

And his ifs are very pretty, if Earl *Hugh* made this Deed to the Nuns of *Bolinton*, immediately before the death of *Robert de Monte-alto* aforesaid; and then you must take his other (if) too—if this Deed was made in King *Stephen's* time, and then you must take his third (if) too—if *Robert de Monte-alto* dyed soon after King *Stephen*: what then? why then ⁴¹Earl *Hugh* must be a great deal older, at least 24 years older than *Bertred* his Wife.

[Page 41.]

But if these (ifs) be all false suppositions, and if Earl *Hugh* did make this Deed towards the middle of the Raign of *Henry* the Second, and if *Robert de monte-alto* outlived Earl *Hugh*, (all which are more reasonable to imagine than the other ifs) : what then? We may then conclude Earl *Hugh* was not near so much older than *Bertred* his Wife, as Sir *Thomas* would suppose him: See what stuff he here produceth to prove nothing.

Pag. 49. *Of his Answer to my two Books.*

Here he saith, that whereas I pretend to have shewed that Earl *Hugh* could neither be so old as he would suppose him, nor yet that the said Earl was born in the year of Christ, 1142. Sir *Thomas* Answereth, that any man who can but count 20. to wit, how long it is from 1109. to ⁴² 1129. or from 1110. to 1130. if he looks on his *Defence of Amicia*, pag. 51. and on his Reply, pag. 61. may find that *Hugh Cyvelioc* might be older than he saith.

My Reply.

But whosoever views his Computation in those places, will find the same very wilde: every supposition upon the utmost possibility; and as here, so there, he goes all upon (ifs), which cannot encline any judicious man to a belief; & here he concludes too, but upon a bare possibility, That Earl *Hugh* might be older than he now saith; that is, at least 24. years older than *Bertred* his Wife, which is certainly a great deceit of the Reader, to encline a belief that a thing is so, because it is possible to be so: Doth he anywhere prove substantially that Earl *Hugh* was so much older than his Wife, more than what may be very ordinary with other men in the like Case, or reasonably to suppose he had a former Wife? Shew me that if he can: I am sure it cannot be proved; see my Answer to his defence of *Amicia*, pag. 48, 49. It appears clearly by the Record in the Exchequer at West-

minster, that Earl *Hugh* was but six years older than *Bertrey*, or thereabout, which dasheth out all his Ifs for ever : See more hereof in my *Peroratio ad Lectorem*, at the end of this my second Reply.

Pag. 50. *Of his Answer to my two Books.*

Here he knocks me dead, and thinks now he proves *Amicia* no Bastard for certain,— for he doubts I am no good Arithmetician, because in my Historical Antiquities, pag. 137. I said I was eight years older than my Wife, and he hath taken great pains to search out the difference of our Ages, and finds I am not much above six years older than my Wife.

44 *My Reply.*

[Page 44.]

It is true, I there said so, speaking cursorily and over-hastily without due examination ; for I then conceived she had been born in the eighth year of my Age ; but it appears now she was born in the seventh year of my Age ; so that I am by exact account only six years and two moneth, and about two weeks older than my Wife.

But what is all this to *Amicia*? The Reader may see how he makes it his busines to catch and carp at every thing material or not material.

Pag. 51, to pag. 60. *Of his Answer to my two Books.*

In all this, there is little or nothing material to the main point ; but he spends much time in comparing sundry ancient Authors, to shew that *Matthew Paris* is misprinted in the place urged by me ⁴⁵(to wit, in the Edition put out by Dr. *Wats*, 1640. pag. 79.) where he saith (*William*) *Mandeveyle* was taken Prisoner at Saint *Albons*, *sub anno. 1142.* for (*Geffrey*) *Mandeveyle*.

[Page 45.]

My Reply.

I will never excuse an error, nor deny a truth: I would I could say as much of Sir *Thomas*: indeed it is much that this very word should be mis-printed above other words in *Matthew Paris*: I believe neither Sir *Thomas*, nor any other scarcely, upon such an accidental business could have suspected it to be so, having lighted upon the place by chance, else I should have made a stricter enquiry; but it had reason to put him upon an enquiry.

[Page 46.] Yet where he saith, *pag. 59.* that I dealt deceitfully herein, and that I did it purposely: This is another Trip of Sir *Thomas*; for had I then known it to be mis-printed, I would ⁴⁶never have urged it, at least without a Note upon it.

However the mis-printing of (*Hugh*) Earl of *Chester*, for (*Ran-dle*) in the Welsh History, *pag. 197.* holds firm for ever: and Sir *Thomas* confesseth it mis-printed in this his Answer, *pag. 52.* very probably in the latter Copies, the letter (*R*) standing for a word in the Original book, might be mis-written (*K*) in the Copy; which was supposed to be *Hugh*, or else for certain the Original was mistaken.

But for all this, Sir *Thomas* is so far from an ingenious Confession herein, that he will justifie his absurd error of computing Earl *Hugh* to be 41. years old when he married *Bertred*; & this he grounds upon the *Errata* at the end of Doctor Powels Notes on the Welsh History aforesaid, where it is said we must read — *pag. 197. line 16. Hugh Son to the Earl of Chester.*

[Page 47.] Which amendment is certainly as far from the truth, as that already Printed, and it is very question-⁴⁷able whether the said Earl *Hugh* ever lived to be 40. years old, for he dyed *Anno Domini*, 1181. and suppose we, that he was eight years old when his Father dyed *Scilicet*, 1153. (which I believe is as much as by reasonable account any indifferent person can well judge him so to be) yet would Earl *Hugh* be but 36. years old when he dyed, *Anno scilicet* 1181. and if he were twelve years old at the death of his Father (which I am confident can never be proved by

good Authority) yet would Earl *Hugh* be but 40. years old when he dyed: See what a shift Sir *Thomas* would now make, but to suppose Earl *Hugh* to have a former Wife, which certainly he never had; but it appears now by a Record, that he dyed about the Age of 32.

Again, Sir *Thomas* saith, *pag. 51.* that *I* go about to disparage Doctor *Powel* all *I* can, and that *I* will not suffer the Welsh History to be read, as it should have been Printed; as also *pag. 52.* that *I* will now disparage the said History, although in ⁴⁸ my Historical Antiquities touching the Kings of *Wales*, *I* did chiefly follow the same.

[Page 48.]

This is another unkind reflection: *Sit liber Iudex*, *pag. 94.* of my former Reply; my words are these — As *I* believe it [that is the Welsh-History] to be true in many things, so it hath also some gross mistakes; *supra.* nor is it at all proved by good Authority, or exactly composed through-out; nor shall you therein from the beginning find all the Wives, Children, and Bastards of the Ancient Kings and Princes of *Wales* clearly Recorded; and so are Doctor Powels Notes thereon full of Errors, and especially in his absurd Pedegree of the Earls of *Chester*, and in several other things.

Here is nothing but what every knowing man (who doth seriously peruse the same) will acknowledg to be true; and some mistakes may be, and are in the writings of very Learned men, and yet no great ⁴⁹ disparagement neither: and I do confess also, that *I* followed the Welsh-History in the Princes of *Wales*, for *I* had no better, nor other to follow.

[Page 49.]

Pag. 60. Of his Answer to my two Books.

Having now concluded his Answser to my former Book, he tells us that in my Latine Epistle to the Judges (which he supposeth to be mine, though *I* vouchsafe not to set mine name thereto) *I* said he was the first Instigator of this Controversie; but whether

that be so or no, he refers the Reader to his Epistle before his *Defence of Amicia*, and to the second and third pages of his Reply.

My Reply.

[Page 50.] But what Sir *Thomas* faith there, was not the first time of this Controversie between us: For he faith in that Epistle, that if I would have ⁵⁰delivered what I did conceit about *Amicia* as an uncertainty only, then I knew he would have rested satisfied with the judgment of those many knowing persons, who dissented from me in opinion therein.

But this was a little before my Historical Antiquities were Printed; nay he came to *Tabley* †also, purposely to † About desire me (hearing then that my Book was about to 1672. be Printed) that I would put *Amicia* under the Title of the doubtful Issue of Earl *Hugh*; when I told him that I thought it not fit to put down in my book any such third title of doubtful Issue, for she must certainly be either lawful or unlawful, which method *I* had observed in the rest. I told him also that it was not at all doubtful unto me, for in my judgment she was certainly a Bastard: And then he said, if I did place her under the unlawful Issue of Earl *Hugh*, he would write against it, which afterwards he did; ⁵¹and *I* believe it had been as good to have let it alone.

[Page 51.] But before this, †we had long entercourse (some † 1664 years before) by Papers between us upon this Controversie, which Papers *I* have yet by me; and which Also 1672. (when my Book was in Printing) he desired *I* would not print any of them without his consent, and *I* promised *I* would not, and *I* kept my word with him; and had it not been for those passages betwixt us, *I* had not said near so much of it in my book as *I* did, and so much for this. See my Answer to the *Defence of Amicia*, pag. 3.

Pag. 60. *Of his Answer to my two Books.*

He tells us also in the same page, that I do not put the question of Law aright: but the point must be otherwaies proved then by such a frivolous question as mine is.

52 *My Reply.*

[Page 52.]

I am sure *I* know not how to put it clearer to the point; *videlicet*, whether Lands in those Ages might not by the ancient Law be given in free-marriage with Bastards? for Sir *Thomas* saith, the Deed of Services in frank-marriage with *Amice*, proves she was no Bastard, because (saith he) the Law will not allow such a grant with a Bastard: *I* say, though at this day the Law will not allow it, yet it would then allow such a grant in the Age when *Amicia* lived, as the Law was then taken: must not now the question be—whether the Law in those Ages would so allow it, or no?

And yet it is no sure Argument to prove *Amice* no Bastard, though the Law should not then allow such a grant; as to argue thus—*Amice* had Lands given with her *in libero maritagio*, ergo, *Amice* was no Bastard, for many irregular Deeds may sometimes pass, which in strict-⁵³ness of Law might not prove authentical: But *I* conceive the Law in those elder Ages would and did allow such grants; and we plainly see he waves the question, and will not abide the test; and it may suppose too, that the Opinions of some Lawyers (which he brags on in his books) were procured by putting off a wrong Case.

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I will also agree with him to put the other Case to the Judges, as he would have it put; *videlicet*, whether the Law be not now altered in this and sundry other particulars, from what it was in elder Ages, and that without any Act of Parliament? for otherwise Lands would now pass with Bastards legally *in libero maritagio*.

Pag. 61. *Of his Answer to my two Books.*

Here he saith, that if *I* had been so conversant in Divinity, as *I* would have the Judges to believe, it seems strange to Sir Thomas that ⁵⁴*I* had not learned my duty better to my deceased Grand-mother; for we are bound to Honour all our Parents, immediate or immediate, living or dead; and so compares my writings of these books to the wicked act of *Cham* in the Scripture, who divulged the shame of his Parent.

[Page 54.]

My Reply.

In the first place, let me observe to the Reader, that this is he who oft blameth me for mis-repeating, and yet runs into the same error himself, and tells us here, that *I* would have the Judges to believe that *I* am much conversant in Divinity; let him shew me where *I* say so, if he can, or that *I* make, or say, that *I* am conversant in Divinity; my words are—*I* prefer Divinity above all other Studies, this is far from saying, *I* am conversant in Divinity.

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In the next place, this act of mine cannot by any rational man be said to be like that of *Cham*, for he ^{re-}⁵⁵*vera*, saw his Fathers Nakedness, and did not cover it, but told his Brethren without: now *I* could not see my said Grand-mother's nakedness in that fence, who dyed above 450. years agoe, nor will any man say, but himself, that *I* have uttered any scornful or disgraceful words at all against her.

Expositors on the Fifth Commandment, tell us, it includes in it the honouring of Kings and all in Authority over us, as well as our natural Parents, to whom we owe honour and reverence in like manner.

And tell me, were ever any of those worthy Persons or Historians, who have commemorated the Wifes and Concubines, Children and Bastards of our Kings of *England* in their Histories, ever tearmed *Chams* for the same? Nay, doth not *Moses*

himself, in his History of *Genesis*, chap. 38. Record the Whoredom of *Judah* (who was great Uncle to the Father of *Moses*) with *Thamar*, his Daughter in Law, ⁵⁶and also her Bastard-Twinns, *Phares* and *Zarah*? Nay, are not these Twinns reckoned up in the sacred Genealogy, *Matthew*, Chap. 1.

[Page 56.]

How many great and most honourable Families have been descended from Bastards, Kings, Dukes, Earls, and others?

I have heard that King *James* used to say, it was a good Family that had neither Whore nor Thief a Kin to it: I am sure it is a rare Family that never had any Bastard.

But Sir *Thomas* faith, that in some respects *I* have exceeded that Pattern of *Cham*, †though *I* have done nothing at all like that A&C of *Cham*; *I* am sure he is *Kim-* † pag. 62. *Kam* from the point, but he forgets his own duty, as to revilings, 1 Cor. 6. 10. and follows not the Pattern of *Michael* the Arch-angel, who durst not take up a railing accusation against the worst of Antagonists, *Jude*, verf. 9. and so much for the Case of Divinity, which he mistakes as well as his Law. It is ⁵⁷as Lawful for any Historian to Record the Bastards, as

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Lawful Children: It is an error not to do it.

Pag. 62. *Of his Answer to my two Books.*

1. Here he faith, that in the second book which *I* direct to all the Judges of *England*, it so falls out that there is nothing therein, but what is in my former books, and is already Answered; though if there had, he shoulld not have presumed to have given any Answer thereto, because those learned Persons know well enough what the Law was and is, in all particulars.

2. How-ever he cannot but observe how lightly *I* speak of the Lord *Cook* in my 48. page.

3. And also, how *I* have such light expressions in my book directed to the Judges, as he believes were never used before by any Person of discretion to such Reverend and Learned men; no wonder therefore if *I* speak courfely of him, ⁵⁸and tell him of so many impertinencies.

[Page 58.]

My Reply.

1. To the first, *I* believe there is something in that Second book, which is not in my former books, nor yet answered by him ; and though the Learned Judges know what the Law was and is, better than either of us ; yet we may with modesty offer what we conceive is right to their more grave judgments ; but it is a good excuse.

2. To the second, *I* do not speak slightly of the Lord *Cook* in my 48. *page*, nor any where else ; my words there are these,—As for the Lord *Cooks* citing of *Braeton* or *Glanvil*, in the Margent, as Authority, for what he there saith, if he maketh a false quotation, or such, as is not to the point, neither *I* nor any man else are bound to believe the Lord *Cook* more than any other.

So let the Reader judge whether this be not another Trip.

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69 3. To the third, I conceive *I* have no such light expressions that might not be used to our light Controversie, or before Learned Judges, nor yet such as were never before used by any person of discretion, as he alledgedeth : he might have done well to have shewed what those expressions were ; but perhaps, if they had been used by such a discreet Person as himself, then they would not have been accounted light expressions, but rather plain to the Point, not rude at all.

Pag. 63. *Of his Answer to my two Books.*

[Page 60.]

He faith here in the very Conclusion of his book — whether he be guilty of those [Impertinencies] or untruths, or of that opprobrious Language which *I* do charge him with, let the indifferent Reader be judge ; and whereas it appears that *I* am resolved to have the last word, though *I* have nothing new to say ; and that my writing again ⁶⁰be contrary both to my duty to my Deceased Grand-mother, and to my promise in Print: He declares that if what *I* shall write hereafter be no more to the purpose than what *I* have said in those two last books, that he will not appear in Print against me any more.

My Reply.

To all which *I* say, that *I* do not know that *I* have any where at all charged him either with Impertinencies or Untruths, but what are so charged justly by me, that *I* can suddenly call to remembrance.

And for opprobrious Language (wherein this last Answer of his far exceeds.) *I* have only this to add for my self, that in my Answer to his *Defence of Amicia*, *I* think no man can shew me any one uncivil expression in the whole book ; but afterwards, when he had in his following books taxed me unjustly in many things, and carped at every thing in mine, Pertinent or Impertinent, *I* confess *I* was more severe in my expressions in my latter books, but he led the way ; what *I* have said, was but in vindication of my self, for my Reputation is as dear to me as his can be to him ; and though my expressions sometimes may seem tart, yet not so opprobrious neither as he makes them ; had he kept close to the point, and avoided his Calumnies and Cavils, and confess his Errors more ingeniously throughout, *I* should neither have had occasion to retort, nor have Answered to them.

And what *I* have written above my first intention, he hath forced me thereunto.

But now he will appear no more in Print against me, if what *I* shall write hereafter be no more to the purpose than what *I* have said in those two last books.

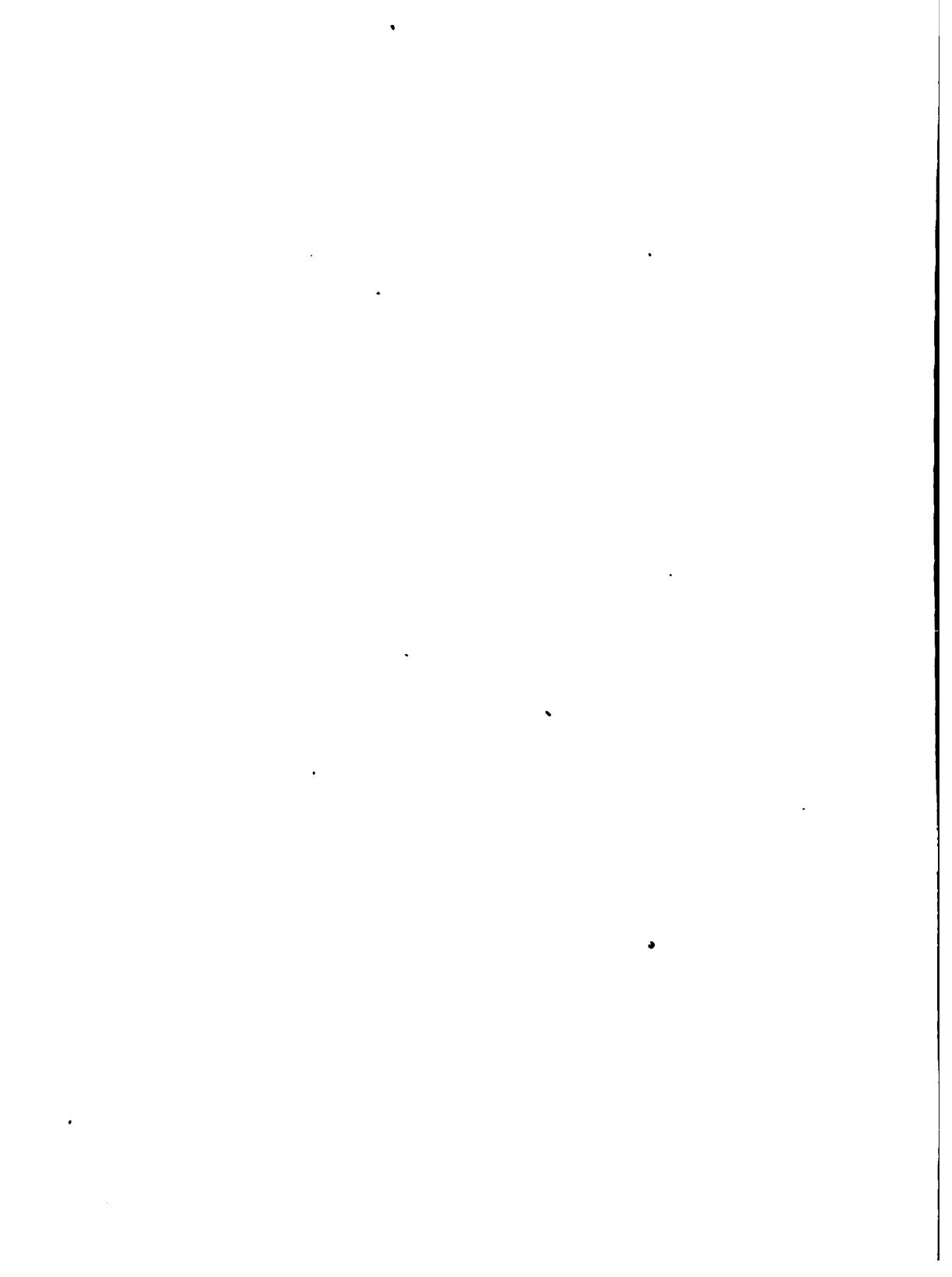
Whereunto *I* say, that for certain there is so much already said to the purpose in them, as is not yet solidly and substantially answered by him ; and herein I submit my self to all Ingenious Readers.

Mobberley, May 28.

1675.

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⁶³PERORATIO

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A D

LECTOREM.

SInce I writ this Second Reply, I am credibly informed that Sir Thomas did write to some of his Friends about May or June, Anno Domini, 1675. to this or the like effect.—

I hope now the Contest between Sir Peter and me will be at an end; for Mr. Dugdale, in his Baronage of England, page 41. hath delivered his Opinion on my side: and Sir Peter having appealed to the Judges, Mr. Dugdale thereupon did move them in the Case; and they upon ⁶⁴mature debate determined that Amicia was no Bastard. I have seen his last Sheet, which I have answered, but shall not yet Print it.

[Page 64.]

1. This Letter was shewed up and down *Chester*, purposely to delude the easie multitude; for since he cannot demonstrate or support the legitimacy of *Amicia*, either by good Reason or Authority, Sir. *Thomas* used this secret practice to gain a belief of his Cause, as supported by Opinions; whereas in truth there is no such thing as a mature debate by our Reverend Judges in the Case of *Amicia*; for as yet the Case in Law is not agreed upon by both sides, how then can there be a mature debate, or determination of the Controversie? for Sir *Thomas* saith in his

Answer to my two books, *pag. 61.* that the point must be otherwise proved than by such a frivolous question as mine is ; and a little before *pag. 60.* he saith that in the Epistle Dedicatory, wherein I appeal to the Judges, I do not put ⁶⁶the question aright ; whereas there can be no other point of Law to be resolved as to the Controversie in hand, but this,—Whether Lands in those elder Ages might, and did Lawfully pass with Bastards *in libero maritagio*, or no ? That they might, and did so pass, I have before in my other Books clearly proved as well by the very words of *Glanvil* himself, and the Law then no where disallowing the same ; as also by three sure Precedents of those Ages.

But because Sir *Thomas* takes this upon trust from Mr. *Dugdale*, I shall here in publick unmask that Letter more fully, to the undeceiving of all men.

2. As to the Opinion of Mr. *Dugdale*, it is true, he hath delivered his opinion for the Legitimacy of *Amicia*, in his Book of the Baronage of *England*, newly Published, *Tom. I. pag. 41.* And it is no more than what Sir *Thomas* formerly told us in his books, That he was of that judgment before he published his ⁶⁶said book of the Baronage : What then ? many very wise and knowing men have declared their Opinions with me, that she was a Bastard ; both Divines and Lawyers, and other grave and understanding men ; but I shall examine these things more particularly.

3. And in the first place, I shall always desire to be understood without the least detraction from the honour and due praise of Mr. *Dugdale*, of whom I have ever had a good esteem, as a most diligent and indefatigable searcher of the Records and Antiquities of our Nation : *Sed Bernardus non videt omnia* ; nor should I now have mentioned him at all for his opinion herein, but that Sir *Thomas Manwaring* brings him here upon the Stage.

Only we may by the way take notice, that some years agoe Mr. *Dugdale* did draw up Sir *Thomas Manwaring's* Pedegree ; wherein he puts *Amicia*, the Wife of *Rafe Manwaring*, without her due di-⁶⁷stinction (as I conceive) of a Bastard, and is therefore

the more concerned to sticke for Sir *Thomas* in this Contest between us: So that formerly he consulted some Lawyers for their Opinions in this Case of History; for whether Bastard or no Bastard hath nothing of Law in the Case, or whether *Hugh Cyvelioc* Earl of *Chester*, had any former or other Wife besides *Bertra*? these are questions to be resolved by History, Records, and Reason; but Mr. *Dugdale* would now support his opinion with a point of Law, and therefore moved some Lawyers for their opinions; but how the Case was stated, no body but himself knows, nor what the point of Law was, wherein they delivered their opinions: and methinks it argued some doubt within his own breast, that she was a Bastard; otherwayes why should he consult any Lawyers in the case: and in truth, let the Law be what it will, she was certainly a Bastard, which to my poor reason, is as plain ⁶⁸as the Sun when it shines; but it seems he was satisfied with the Opinions of thofe Lawyers, that she was Legitimate, because (faith he) it is a known *Maxime* in the Law, that nothing can be given in Frank-marriage to a Bastard: but this *Maxime* is to be understood with a due distinction of the times and ages, otherwise it will fail; but I shall anon speak more of this, and of his moving the Judges in the Case; wherein I should be glad to see what Case he put, and the resolutions of our Reverend Judges thereon, under their hands; in the mean time I shall go on with Mr. *Dugdale's* Opinion, whereon Sir *Thomas* so much depends.

4. In his said *Book of the Baronage of England*, pag. 34. b. he calls *Robert* and *Ottiwel*, two Illegitimate Sons of *Hugh* (Sir-named *Lupus*) Earl of *Chester*; wherein he is to be commended for speaking out, for so they were without all doubt: Howbeit, I find not any Author hitherto, who have Writ-⁶⁹ten of our ancient Earles of *Chester*, Commemorating either these, or any other at all, as Bastards, to any of our ancient Earls of *Chester*; neither *Brooks* in his Catalogue of Nobility, nor *Vincent* in his Corrections of *Brook*, nor *Milles* in his Catalogue of Honour, nor *Fern* in his *Lacyes-Nobility*, nor *Powel* in his Notes on the Welsh-History, pag. 294. nor yet Mr. *Dugdale* himself, in his

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Warwick-shire; till here in his late book of the Baronage, he now speaks out a little more.

5. But yet in the same page, he calls *Geva* (Daughter of *Hugh Lupus*, and Wife of *Geffry Ridel*) a Legitimate Daughter not to be doubted of, because she had *Drayton-Basset* given her in Free-Marriage by her Father, which could not have been so bestowed on a Bastard, as our Learned Lawyers do clearly affirm; thus Mr. *Dugdale*.

Which very Deed of *Drayton-Basset* to *Geva*, I have produced [Page 70.] in my *Historical Antiquities*, pag. 70 112. 113. as a sure Precedent that Lands did pass with Bastards in Free-marriage in those more ancient Ages, as well as with lawful Daughters; and have fully proved *Geva* to be a Bastard out of an Historian of good Credit, and Contemporary with *Geva*, by sure Consequence out of his words: See my Answser to the Defence of *Amicia*, pag. 33. to pag. 47. which Reasons and Authorities, are not yet solidly or rationally Answered by any, and which I shall have occasion further to mention, when I come to the Case of *Amicia* truly Stated.

And here by the way, we may take notice, that these two Sticklers for *Geva*, Sir *Thomas Manwaring*, and Mr. *Dugdale*, agree not in their points of Law; for Sir *Thomas* will not have these words (*in libero Conjugio*) used in the Deed of *Drayton*, to be good in Law, to make it a gift in Free-marriage, and only to convey but an Estate for life unto *Geva*; because the Lord *Cook* affirms that a gift in Free-marriage⁷¹ must be strictly tyed up to the words (*in libero maritagio*) and no other: See more of this in my first Reply to Sir *Thomas*, pag. 4. to pag. 15.

But Mr. *Dugdale* and his Lawyers take the words (*in libero Conjugio*) in the Deed of *Drayton* to be a good gift in Free-marriage; and so without doubt it was, and in those Ages as good as *in libero maritagio*; and did convey an Estate of Inheritance to the Heirs of *Geva*, who enjoyed *Drayton* accordingly.

So we see Sir *Thomas* and the Lord *Cook* are of one Opinion, and Mr. *Dugdale* and his Lawyers are of another opinion; both

of them against the Bastardy of *Geva*, which yet is clearly collected by sure consequence out of *Ordericus* an Historian, of very good Credit, and contemporary with *Geva*, who knew the truth better than any man now living can possibly know, and needeth no point of Law to prove the same, and cannot be dif-⁷²proved by any point of Law whatsoever.

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6. As to *Amicia*, he hath these words in his said Book of the Baronage, pag. 41.— That she was Daughter of Earl *Hugh*.

1. It sufficiently appears, not only from the grant of two Knights Fees with her in Frank-marriage, to *Rafe de Mesnil-warin*, where he so termeth her, but by another Deed of *Roger de Mesnilwarin*, her Son, wherein he calls *Randle*, Earl of *Chester*, his Uncle, who was Son of the said Earl *Hugh*.

2. As to her Legitimacy, I do not well understand how there can be any question, it being a known Maxime in Law, that nothing can be given in Frank-marriage to a Bastard.

3. The point being then thus briefly cleared, I shall not need to raise further Arguments from Probabilities to back it, then to desire it may be observed that *Bertra* (whom I conclude to be a second Wife) was Married unto him when ⁷³he was in years, and she her self very young: So that he having been Earl no less than 28. years, it must necessarily follow that this *Bertra* was not born till four years after he came to the Earldome; nor is it any marvel he should then take such a young Wife, having at that time no Issue-male to succeed him in this his great Inheritance: thus Mr. *Dugdale*.

[Page 73.]

1. To all which I say, first, That it plainly appears she was Daughter of Earl *Hugh*; but that she was a Lawful Daughter, that no where appears; nor did the Earl in the Deed mentioned, grant her two Knights-Fees in Frank-marriage, as is here alledged; but he granted with her in Frank-marriage, the Service of *Gilbert*, Son of *Roger*; to wit, the Service of three Knights-Fees, by doing to the Earl and his Heirs, the Service of two Knights-Fees; so that the Earl released only the Service of one Knights-Fee by this Deed; too mean a Portion ⁷⁴for a Lawful

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Daughter of the Earl of *Chester*, especially for the sole Daughter and Heir by a former Wife, as Mr. *Dugdale* supposeth her to be; so that *res ipsa loquitur*, whereas the four lawful Daughters of Earl *Hugh*, by his Wife *Bertred*, Married four of the greatest Earls then in *England*, and shared all the Lands of the Earldome of *Chester*; and sure the Eldest Daughter by a first Wife (if the Earl had a former Wife) ought to have had as good a Portion of Lands or Money, as any of his Younger Daughters by a latter Wife, which for certain *Amicia* never had, nor claimed.

[Page 75.] 2. To the second, the *Maxime* of Law, that nothing can be given in Frank-marriage to a *Bastard*, is to be understood of the Law, as it is now taken in these latter Ages; but that the Law was otherwise taken in the time of *Amicia*, and those more ancient Ages, I have proved in my former books, both from the words of *Glanvil*, who was Chief Justice of *England*, and lived in ⁷⁵the very Age with *Amicia*, as also by three clear Presidents of those former Ages; and shall have further occasion to mention the same in the Case of *Amicia* hereafter following, which I have briefly and truly stated by it self, for the better apprehension of all men.

3. To the third: Here Mr. *Dugdale* concludeth *Bertra* to be a second Wife; but doth not, nor cannot in the least prove a former Wife; much less *Amicia* to be the Daughter of a former Wife.

And as to his Argument of Probability, *I* deny absolutely that Earl *Hugh* married *Bertra* when he was in years; for though he were Earl three or four years before she was born, yet it follows not that he did Marry her when he was in years, for he came to be Earl in his Infancy.

[Page 76.] But that I may lay this Argument of Probability (as he calls it) asleep for ever, take this Record here following, out of the Roll de *Dominibus pueris, & Puellis*, re-⁷⁶maining in the *Exchequer at Westminster*: Which Roll Mr. *Dugdale* hath there also cited in the Margent, to prove the Age of *Bertrey*, though not in the Words which I have here more at large expressed: I say,

take here the true Copy of the Record *Verbatim*, which my Friend hath twice examined for me, to prevent Mistakes: *viz.*

Scaccarium apud { *In Rotulo de Dominabus Pueris, & Puellis,
de anno 31. Hen. 2. in Custodia Rememora-
toris Regis Existente, continetur (inter alia)
ut Sequitur, &c.*

Westminster.

Com. Lincoln.

Balteslawe - Wapentak.

*Matilda Comitissa Cestriæ est de donatione Domini Regis: et
fuit fillia Roberti Comitis Glocestriæ filij Regis Henrici Primi,
et est L annorum, & amplius: Hujus villæ Recepit Comitissa his
VIII. annis: Ip⁷⁷sa tenet Wadinton in dote de feodo Comitis
Cestriæ: et firma est XXII. libr. per annum: dicta villa valet per
annum XL. lib: Cum hoc instauramento, Scilicet, II Carucis,
III V'accis, I Tauro, IIII Suibus, I Verre, D ovibus, quæ ibi
sunt: ... &c.*

[Page 77.]

Com. Lincoln.

Jeretre - Wapentak.

*Bertreia Comitissa, filia Comitis de Evereous, uxor Hugonis
Comitis Cestriæ, est de donatione Domini Regis; & est XXIX
annorum. Terra quam Comitissa habet, XL. lib. Maritagium;
& defectus sunt ultrà mare, ideo nesciunt Juratores quid valeant.
Dominus Rex præcepit, quod ipsa haberet XL libratas terræ Do-
mini sui in Beltesford, Hemmingly, & Duninton: licet non habuit
nisi XXXV libratas, & X solidatas. Quia (ut dicunt) dicta terra
non potest plus valere cum Instauramento quod comitissa ibi recepit;
Scilicet, V Carucis, CCCXLI Ovi-⁷⁸bus, X Suibus, I Verre. Sed
si in Duninton apponenterentur CC oves, & X sues, & I verris, tunc
Valeret.*

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So that, by this Record it clearly appears, that as *Bertrey* was twenty nine years of Age, 31. Hen. 2. 1185; So *Maud* (the Mother of *Hugh Cyvellioc*, Earl of *Chester*) was aged fifty years, *Anno Domini* 1185. 31. Hen. 2. &c.

And so *Maud* must be born *Anno* 1135. and *Bertrey* must be born *Anno* 1156.

Now it cannot be imagined, that *Maud* could have a Child before she was fifteen years of Age: And then Earl *Hugh* could not be born till the year 1150. at soonest. And by Consequence, Earl *Hugh* was about three years old when he came to be Earl; and about six years older than his wife *Bertrey*.

[Page 79.] What a monstrous and wild Computation then hath Sir *Thomas Manwaring* made, and upon utmost Possibilities too, supposed, in his Answer to my *Addenda*, pag. 50, 51. ⁷⁹ where he would have Earl *Hugh* to be 41. years old when he marryed his Wife *Bertrey*, which Marriage he supposeth to be *Anno* 1171? So also in his Answer to my two Books, pag. 49. Wherunto see my *First Reply*, pag. 91. to pag. 94. See also in my *Second Reply*, to his Objection in that Point, mentioned here a little before.

And how could Earl *Hugh* now be in years (as Mr. *Dugdale* would have him) when he marryed his Wife, supposing with Sir *Thomas*, the Marriage to fall *Anno Domini* 1171? For, by this Record Earl *Hugh* would then be but 21 years old, and his Wife about 15. years old. So this Argument of *Probability* is become an Argument of *Improbability* of the Earl's having any former Wife.

[Page 80.] This Record came to my hands after I had written my *Second Reply*: And I am very confident, that when soever any Record, tending to this Point, concerning Earle *Hugh*, or *Amicia*, shall hereafter, at any time, ⁸⁰ be discovered, it will more and more illustrate the Truth of what I have written about them.

7. Having now laid asleep for ever The Argument of the Sticklers for the Legitimacy of *Amicia*, drawn from the Erroneous Computation of Earl *Hugh's* Age; I come now to the Letter of Sir *Thomas Manwaring*, before mentioned, written by

him to a Kinsman both of his and mine, and left with *Throp* the Stationer in *Chester*, purposely to be divulged, and made known to every Man in Town: wherein he writ- (among other things), That I having appealed to the Judges, Mr. *Dugdale* had moved them in the Case: who upon Mature debate, determined, that *Amicia* was no Bastard, as I was credibly informed by one who saw the Letter.

But, (as I said before) How could there be any Mature-debate, or Determination of the Point in Controversie by our Reverend Judges, whiles as yet the Case is not at all agreed upon between us? For, ⁸¹Sir *Thomas* waves the Question in Law, and will not abide the Test; See pag. 60, 61. of his Answer to my two books.

(Page 81.)

For whether *Amicia* was a Bastard, or no? this Question hath nothing of any Law in the case, and therefore unfit to be put to our Reverend Judges for their Opinions, unless also all the Records and Histories touching the same, together with the Reasons alledged on both sides, were produced before them: It is more proper for them to Judge only upon the point of Law.

And it is granted on all hands, that Lands cannot pass with Bastards *in libero maritagio*, at this day, as the Law is now taken: but in the more ancient Ages, when the Deed to *Amicia* was made, Lands might and did usually pass with Bastards *in libero maritagio*: I affirm it out of ancient Precedents; Sir *Thomas* denies it.

Now all Deeds by the rule of Law, are to be Construed and under-⁸²stood according to the time when they were made; so that there is now no other Case of Law to be put, but this, as I put the same in my Epistle Dedicatory, to all our Reverend and Learned Judges; to wit,—

(Page 82.)

Whether in the Age of *Glanvil*, Lands lawfully might, and did usually pass with Bastards in Free Marriage, or no?

Again, I am assured from very good hands (who have lately enquired of many of our Judges above) that there was no such thing as a mature debate and determination, as Sir *Thomas* mentioneth in his Letter, nor their Opinions at all delivered as

yet in the Case of *Amicia*, now in Contest ; and some of them said, that they never had any such a question asked them, as whether in the Age of *Glanvil*, Lands might Lawfully pass in Free-marriage with Bastards ?

If Mr. *Dugdale* hath moved any of the Judges in private, for [Page 83.] their Opinions in any point of Law about ⁸³*Amicia*, had he but given me due notice of such his intention, I would have met him half way, and so the Case might have been truly stated, and the point thorowly debated ; for he being on the place, might have those opportunities which I could not at this distance possibly have, and so the truth would have appeared to the world.

And therefore, that I may deal above-board, I have here following, published by it self, The Case of *Amicia* truly Stated, for the better apprehension and information of all Persons ; and the rather, for that Mr. *Dugdale* only buildeth his Opinion of the Legitimacy of *Amicia* on the same point of Law, in his Baronage of *England*.

And howbeit (as I formerly said) I left every man to his own free judgment, thinking rather to establish my own Opinion by Authorities and good reason, then by other mens Opinions ; so I never went about to hunt for Opinions, especially in the Case of *Amicia*, (for ma-⁸⁴ny did concur with me without my seeking) till after that Letter of Sir *Thomas Manwaring* before-mentioned : for I ever counted it an improper thing to prove a point of History by a nice point of Law.

But I have lately made some enquiry, and am assured from very good hands, that some of our more eminent Judges above (and I believe all of them, if they would deliver their Opinions in the Case) do concur with me in the point of Law aforesaid ; and so do also other Eminent and Learned Lawyers here below ; that in those elder Ages, a gift in Free-marriage, with a Bastard, was good, although at this day our Law is otherwayes taken.

So that now there is not so much as one seeming Argument of Reason left to uphold the Legitimacy of *Amicia*.

Besides, one of our most eminent Heralds of our Nation, and

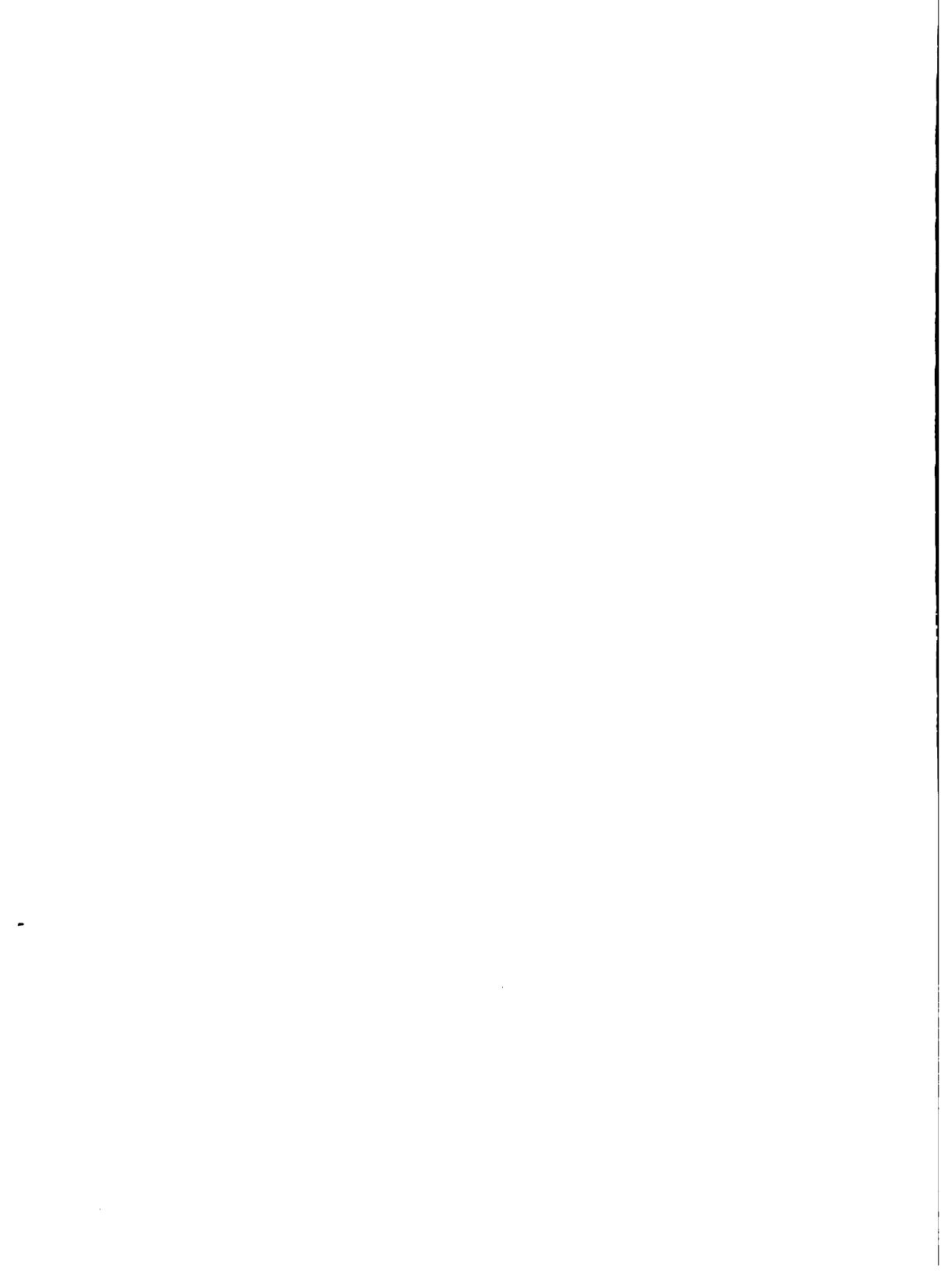
(Page 85.)

King at Armes, is of Opinion with me also, that Earl *Hugh* never had any other ⁸⁵ Wife but *Bertrey*, as I have it from a sure hand, who was then present when he publickly spoke it, whose judgment *I* may well bottom on ; for I am sure there is no History, or Record to prove any other Wife at all, and very many other judicious and knowing men do concur in opinion, that *Amicia* was a Baftard ; and so *I* leave it to the judgment of all men, who are vers'd in Antiquities, Records, and Histories.

And so *I* have done, if Sir *Thomas* hath done ; and now *I* think it will be time for both to have done.

Mobberley, Decem-
ber the 17th.
1675.

F I N I S.



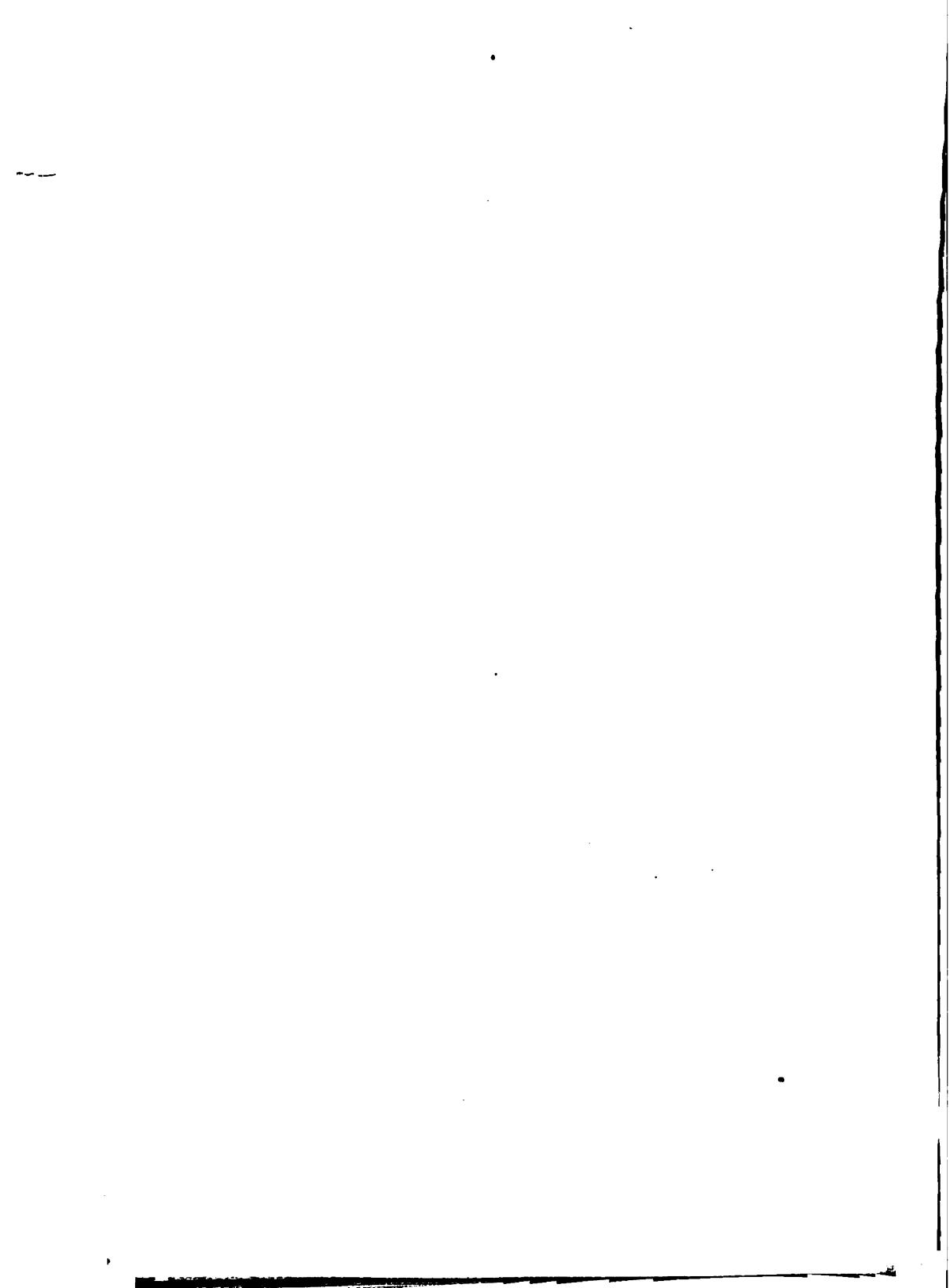
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Truly Stated.

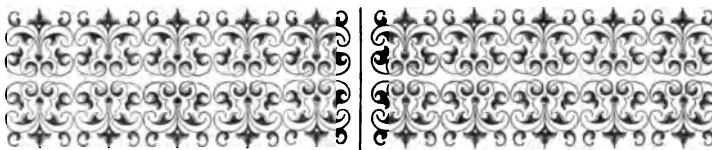
By Sir *Peter Leycester*,
Baronet.

August the 5th. MDCLXXV.

Qui vult decipi, decipiatur.

Printed in the Year, 1676.





80 T H E

[Page 89.]

C A S E
O F

A M I C I A

Truly Stated.

THe Question concerning *Amicia*, Wife of *Rafe Mawring*, and Daughter of *Hugh*, Sir-named *Cyvelioc*, Earl of *Chester*, is briefly this—

Whether the said *Amicia* was a Bastard, or no? This is altogether a question of History, and nothing of Law at all in the Case.

90 The Reasons Collected out of History, Records, and Evidences, shewing her to be a Bastard, are these—

[Page 90.]

1. It is confessed on all hands, that *Amicia* was no Daughter by *Bertrey*, the Wife of Earl *Hugh*, for then she would have shared the Lands of the Earldom, with the other Daughters by *Bertrey*, which for certain she did not, nor ever claimed any part of the same, as is most manifest by the Record of 18. *Hen. 3.* when all the Co-heirs did implead *John the Scot*, then Earl of *Chester*, upon a Writ *de rationabili parte*: See my book of Historical Antiquities, pag. 151. as also by the testimonies of many of our ancient Historians, who have Recorded all those Daughters in their books.

And she could be no Daughter by any latter Wife, because *Bertrey* survived Earl *Hugh*, her Husband : See my said book of Antiquities, pag. 132, & 139, & 143, & 148.

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⁹¹ And she could be no Daughter by any former Wife ; because Earl *Hugh* never had any other Wife but *Bertrey*? And the Sticklers for the Legitimacy of *Amicia*, do confess that they cannot prove any other Wife at all ; much les can they prove *Amicia* to be the Daughter of any such Wife : Therefore the Earl having no other Wife but *Bertrey*, and *Amicia* being no Daughter by *Bertrey*, *Amicia*, Daughter of Earl *Hugh*, must certainly be a Bastard.

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2. Earl *Hugh* had several other Bastards, as is evident by ancient Deeds ; and if the bare alledging that he had another Wife be sufficient without due proof, than all his other Bastards may be made Legitimate, by saying that they were by another Wife : And our ancient Historians, as *Matthew Paris*, *Poly-Chronicon*, *Knighton*, *Stow*, and others, have Recorded the Lawful Children of Earl *Hugh*; but not one of them ⁹²mentioning *Amicia* in the least, nor any former Wife at all, which some one or other of them, without doubt would have taken notice of, had *Amicia* been a Legitimate Daughter.

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3. *Rafe Manwaring*, the Husband of *Amicia*, was not an equal Competitor at that time, to have Married a Lawful Daughter of the Earl of *Chester*; for we find the Lawful Daughters of this Earl *Hugh* were Married to the greatest Earls then in *England*: The Earl of *Huntington*, who was Brother to the King of *Scotland*, the Earl of *Arundel*, the Earl of *Derby*, and, the Earl of *Winchester's* Son and Heir ; and therefore it is more than probable, that *Amicia* was not a Lawful Daughter, especially since no provision considerable was made for her, who must have been the only Daughter and Heir of Earl *Hugh*, by a first Wife, as those of the contrary opinion would make her ; ⁹³and if so, she ought in all Reason to have had fully as great an Estate provided for her, as any of his Children by a latter Wife, which certainly she never had. Wherefore *res ipsa loquitur*; for nothing appears to

be given unto her, save only the release of the Service of one Knights Fee, given with her in Frank-Marriage, which sure was too small a Portion for a Lawful Daughter of the Earl of *Chester*.

And thus much for the Question of History, whether Bastard, or no Bastard?

Which I submit wholly to the Judgement of all Wise and knowing men, who are versed in Histories, Records, and Antiquities.

And many very wise and knowing men, some Divines, some Lawyers, and other grave and understanding Persons, have herein declared that they concurre in Opinion, that *Amicia* was a Bastard.

⁹⁴ But now ariseth another Question; for those who would have *Amicia* to be a Lawful Daughter, and no Bastard (which cannot be supported either by History, Records, or Reason) they would ground their Opinion from a point of Law; to wit, that Lands cannot pass in Free-Marriage with a Bastard; and because *Amicia* had a grant of some Services in Free-Marriage, from the Earl her Father, therefore they conclude she was no Bastard: For all other Arguments for her Legitimacy are so void of Reason and Authority, that all bottoms on this one Argument; and the Question now is this —

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Whether the Deed of *Hugh*, Earl of *Chester*, (wherein he granted unto *Rafe Manwaring* in Free-Marriage with *Amicia* his Daughter, the Service of *Gilbert*, Son of *Roger*; to wit, the Service of three Knights-Fees, by doing to the said Earl & his Heirs the Service of two ⁹⁵ Knights-Fees,) be a sure Argument to prove *Amicia* a Legitimate Daughter?

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But for the better stating of the question, it is granted on both sides, that Lands cannot now pass in Free-Marriage with a Bastard, as the Law is taken at this day. The proper question of Law therefore in the present Case is this —

Whether by the Law, in *Glanvil's* time (who was chief Justice of *England*, under King *Henry* the Second, and lived in the very Age with *Amicia*, when the said Deed was made) Lands might

and did ususually pass in those Elder Ages in Free-Marriage, as well with Bastards as no Bastards?

The Arguments for the Affirmative part are these —

1. From the very words of *Glanvil* himself (who was the first after the Norman-Conquest, who reduced the Model of our Common-Law into writing) in his Treatise *de Legibus Angliae*,

[Page 96.] lib. 7. cap. I. ⁹⁶ *Quilibet liber homo quandam partem terre suæ cùm filiâ suâ vel cum aliquâ aliâ quâlibet muliere, dare potest in maritagium, sive habuerit heredem sive non, velit hæres vel non, imo & eo contradicente: Alſo lib. 7. cap. 18. Liberum dicitur maritagium, quando aliquis liber homo aliquam partem terræ suæ dat cum aliquâ muliere alicui in maritagium, itâ quod ab omni Servitio terra illa fit quieta, & à ſe & hæredibus suis, versus capitalem Dominum, acquietanda.*

And *Bracton* exprefly, *lib. 2. cap. 7. Quoniam terra data Bastardo in maritagium, ſicut & aliis, vel Bastardo per ſe, in ſe tacitam habet Conditionem vel exprefſam de reverſione ... &c.* See alſo Sir *Thomas Manwaring's Law-Cafes Mistaken*, pag. 10, 11.

So that Lands might be given in Free-Marriage to any man, with any woman whomſoever, without any exception; and if with any Woman whomſoever, then certainly ⁹⁷ with a Bastard; and *Bracton* more exprefly, that Lands might then be given to a Bastard in Marriage; neither are Bastards any where difallowed by the Law, either in *Glanvil* or *Bracton*, for having Lands given in Free-marriage.

2. That the Law was fo taken in the time of King *John*, and upwards, appeareth by fundry Precedents of those elder Ages, whereby Lands were given in Free-marriage with Bastards.

See one in my Book of Antiquities, pag. 112. wherein *Randle*, Earl of *Cheſter* (Sir-named *de Gernounſ*) gave unto *Geva Ridel*, Daughter of Earl *Hugh* [that was *Hugh Lupus*] *Drayton*, in Free-marriage with the Appurtenances, even as Earl *Hugh* gave the ſame unto her in Free-marriage: This Deed was made about the end of *Hen. I.* or King *Stephen*.

And that *Geva* was a Bastard, *Ordericus* an Historian of good

Credit, and Contemporary with *Geva*, plainly shews, for lib. 4
⁹⁸*Ecclesiastica Historiae*, pag. 522. He tells us that *Hugh Lupus* had many Bastard-Sons & Bastard-Daughters ; yet nameth none of them in particular, è *Pellicibus plurimam Sobolem utriusque sexus genuit, quæ diversis infortunijs absorpta penè tota periit* : *Ermentrudem filiam Hugonis de Claromonte Beluacensi uxorem duxit, ex quâ Ricardum Cestrensis comitatûs hæredem genuit, qui juvenis liberisque Carens naufragio periit*. So that having given an account of his Wife, and his Son by her, who dyed young, and without Children, he would certainly have given an Account of his other Children by his Wife, if he had had any other by her ; but to put it out of all doubt, he tells us afterwards, lib. 10. *Eccles. Hist.* pag. 787. *Ricardus Pulcherrimus puer, quem solum ex Ermentrude filiâ Hugonis de Claromonte genuit, Consulatum (Ceftria Scilicet) tenuit*, so that Earl *Hugh* only begot *Richard* on *Ermentrude* his Wife & then by sure consequence out of his words, it must needs follow that *Geva* ⁹⁹ was one of the Earl's Bastards, she being no Child by *Ermentrude*, his Wife ; which is clearly proved without a point of Law, and cannot by any point of Law be taken off.

Again, if *Geva* had been a Lawful Daughter by *Ermentrude*, then she would have been sole Heir to her Brother *Richard*, and ought to have had the Earldom of *Chester*, which she never had, nor ever claimed : See this more fully in my Anfwer to the Defence of *Amicia*, pag. 35. to pag. 40. and if any shall run to the old Subterfuge, and say, she might be his Daughter by a former Wife, let him prove it, and take it ; and she could be no Daughter by a latter Wife, because *Ermentrude* survived Earl *Hugh* her Husband : See my Historical Antiquities, pag. 114.

Other two Precedents we have of Lands, granted in Free-marriage with *Joan*, Bastard-Daughter of King *John*.

1. One, wherein King *John* granted to *Llewellyn*, Prince of ¹⁰⁰*North-wales*, in Marriage with *Joan* his Daughter, the Castel of *Ellesmere* in *Shropshire*; *Tenendum ei, & hæredibus suis qui de eo & prædictâ filiâ nostrâ exierint, de nobis & hæredibus nostris*

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in liberum maritagium; Salvis conventionibus inter nos & ipsum de terra & eodem maritatio factis, &c. Dated *Anno Sexto Johannis Regis, 1204.* See the Deed at large in the Advertisement to the Reader, at the end of my book, stiled *Sir Thomas Mawaring's Law-Cases* mistaken, pag. 53. transcribed from the Record in the Tower of London.

2. Another see in my book of Antiquities, pag. 152. wherein it is Covenanted that *John the Scot*, Nephew of *Randle*, Earl of *Chester* and *Lincoln* by his eldest Sister, shall Marry *Helen*, Daughter of *Lewellyn*, Prince of *North-wales*; and that the said *Lewellyn* shall give to the said *John* in Free-Marriage all the Mannor of *Budford* in *Warwickshire*, and the Mannor of *Suttehele* in *Worcester-shire*, cum¹⁰¹ omnibus Pertinentiis, sicut Dominus *Johannes Rex ea illi dedit in libero maritagio &c.* This Deed was made about 6. Hen. 3. Anno Christi. 1222. Now that the said *Joan* was a Bastard-Daughter of King *John*, take these several Authorities, *Vincent upon Brook*, pag. 204. *Speeds History*, p. 518. *Stow's Annals Augmented by Howes*, pag. 167, 168. *Polychronicon* Translated into English by *Trevisa*, lib. 7. cap. 33. *Cambdens Brittannia in Shropshire*, pag. 453. also *Daniel and Fabian*, and *Milles Catalogue of Honour*, and Sir *Richard Baker's History*, who do all call her base Daughter of King *John*; and no Author at all calls her Lawful Daughter, or reckoneth her among the Daughters by any of his Wives; some of them say she was begot by King *John* on *Agatha de Ferrars*.

And therefore these Deeds and Charters which concerned so great Persons (whom we cannot suppose to be without Learned Council about them) are clear Precedents, ¹⁰² showing how the Law was then taken, and were good Deeds, conveying the Lands with Bastards in Free-marriage in those Ages, which Lands were quietly enjoyed accordingly, and nothing can be said against them: Many other Precedents of like nature in those ancient Ages, might without doubt, upon diligent search and enquiry, be found out.

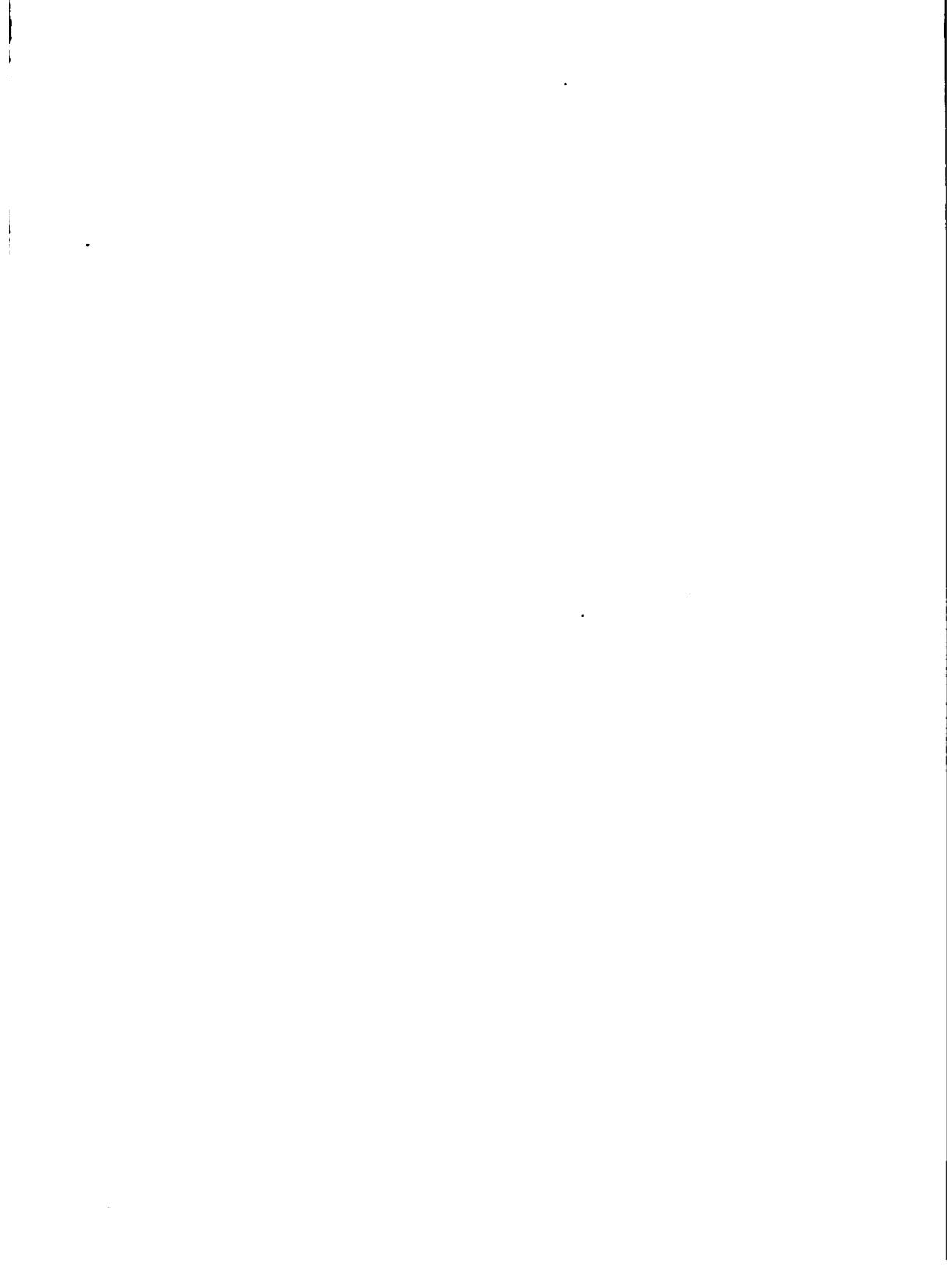
For as much then as it appears by the words of *Glanvil*, that

Lands might then be given with any Woman whomsoever in Free-marriage, and no Bastards then excepted or disallowed by the Law, either in *Glanvil* or *Braeton*, and that clear Precedents of those elder Ages do prove and show, that Lands did then usually pass in Free-Marriage, as well with Bastards, as Lawful Daughters ; and that all Deeds by the rule of Law, are to be construed and understood according to the time when they were made : How can a Deed of Services, given *in libero maritagio* (in the Reign ¹⁰³ of *Henry the Second*) with one justly suspected to be a Bastard, be a sure Argument, or any Argument at all, to prove her Legitimate ?

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Wherefore it is very evident, that in those elder Ages (as the Law was then taken in the Reign of King *John*, and upwards) Lands lawfully might, & usually did pass *in libero maritagio* with Bastards, as well as with no Bastards, howbeit at this day our Law will not permit the same.

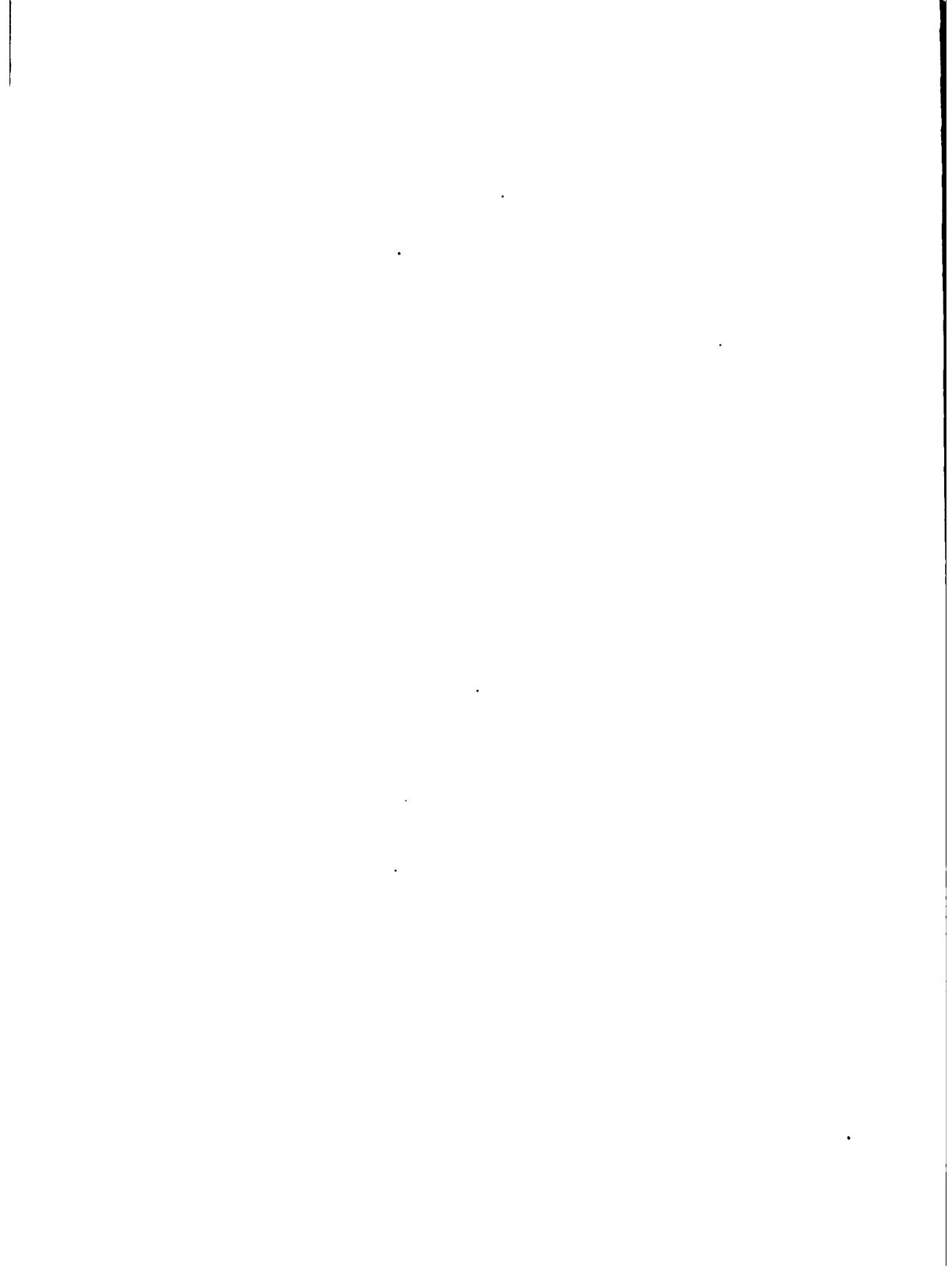
F I N I S.



A N
ADMONITION

To the Reader of
Sir *Peter Leicester's* Books.
Written by Sir *T. M.*

Printed in the Year 1676.





³*An Admonition to the Reader of Sir
Peter Leicester's Books.*

[Page 3.]

Courteous Reader,



Hat you may know *Hercules* by his Foot, and not, with some few perfons, confidently believe every thing which Sir *Peter Leicester* doth write, I here give you an account of the Partiality, Omissions, Uncertainties, and Mistakes of the said Sir *Peter*, in those two Sheets of his *Historical Antiquities*, in which he writes of the Township of *Over Peover*. And I cannot but wonder that they are so numerous, considering he always had liberty to peruse any Deeds or Copies of Records which I had in my custody; and that I also was ⁴ever willing to give him any other assistance concerning my Family, which did lie in my power.

[Page 4.]

First, in his 330 page, he calls *Ranulphus* (who, as he confesseth, in the Conqueror's time held this Township of *Peover*, or the greatest part thereof) the supposed Ancestor of the *Mainwarings*, as he also usually doth in other Townships where he hath occasion to name the said *Randle*; and yet, as you may see, *page* 208. he calls *Odard* the undoubted Ancestor of the *Duttons*. Now what reason he can have to call *Odard* the undoubted Ancestor of the *Duttons*, and *Ranulphus* but the supposed Ancestor of the *Mainwarings*, (except his partiality) I cannot imagine: For, first, the Surname of *Mainwaring* was a fixed name, whereas the Surname of *Dutton* was taken from that place; and if another Family had bought it of the Posterity of *Odard* within few Generations after

[Page 5.]

the Conquest, they possibly might have stiled themselves after that place, that being the manner of those Ages, as Sir Peter tells us in his 250 page; and accordingly he not onely gives us examples there of three Branches ⁵of the *Duttons*, viz. *Warburton*, *Chedill*, and *Ashley*, who did all call themselves after the Places where they lived, but he gives us many other like instances in many other places of his said Book. Secondly, Sir Peter doth not add the Surname of *de Dutton* in his said 250 page, to the said *Odard*, or *Hugh* Son of the said *Odard*, but onely to *Hugh de Dutton*, Son of *Hugh*, who was the Third of that Family. Whereas the Surname of *Mesnilwaren* or *Mainwaring*, was used, as you may see in the 111 page of the said Book, in King *William Rufus* his days, by *Richard Mesnilwaren*, which (except the said *Ranulphus*) is the first *Mainwaring* that we do find. Thirdly, the principal reason (as I conceive) why Sir Peter says, *Odard* was the undoubted Ancestor of the *Duttons*, is, because the *Duttons* enjoyed those Lands, which the said *Odard* held in the Conqueror's time, which were, if I mistake not, part of *Dutton*, which the said *Odard* held of the Earl of *Chester*; and *Aston*, and part of *Weston*, and part of *Halton*, which the said *Odard* held under *William Fitz-Nigel*, Baron of *Halton*. But as the afore-⁶said Lands of the aforesaid *Odard* were enjoyed by the *Duttons*; so the Lands of the said *Ranulphus* in *Blaken*, *Wenitone*, *Tatton*, *Pever*, *Warford*, *Little-Pever*, *Cepmundewiche*, *Ollerton*, *Seneleftune*, *Cocheshalle*, *Hoiloch*, *Tadetune*, (which is the same with *Warmincham*) *Norwardine*, *Sundreland*, and *Bageley* in *Cheshire*, and the Lordship of *Waburne* in *Norfolk*, (being all the Lands which the said *Ranulphus* held in the Conqueror's time) were certainly enjoyed by the *Mainwarings*. But this I say not to take off any thing from the Family of *Duttons*, (for I am fully satisfied that *Odard* was their Ancestor) but to shew the Partiality of Sir Peter, in doubting of *Ranulphus* more than of the said *Odard*.

2. He tells us in his said 330 page, That by antient Deeds there were antiently two Places or Hamlets in *Over-Peover*, one

called *Cepmundewich*, the other *Fodon*; whereas there were Seven such Places there, viz. *Cepmundewich*, *Fodon*, *Hongrill*, *Hethalis*, *Brydenbrugge*, *Twyford*, and *Radbroc*. And it is very strange, how Sir Peter could omit the last of these, seeing in the very same page he speaks of *Radbrook-house* in *Over-Peover*,⁷ and mentions a Deed by which *William Mainwaring*, then Lord of *Over-Peover*, gave *illam terram quæ vocatur Radbroc integrum*, unto *Thomas Mainwaring* his younger Son.

[Page 7.]

3. In the Pedigree of the *Mainwarings* (page 331) he leaves out *Ranulphus*, who is nominated in *Doomsday-Book*, *Richard de Mesnilwarin*, mentioned in his *Hist. Antiq.* (page 111.) *Roger de Mesnilgarin*, or *Mainwaring*, and *William* and *Randal* his Sons, spoken of by him (page 341.) *Roger de Menilgarin*, or *Mainwaring*, named by him (page 362.) *Sir Ralph Mainwaring*, and *Sir Roger Mainwaring* his Son, both taken notice of by him, (page 330.) and this upon a pretence, that they were Lords of *Warmincham*: Whereas I am confident he will not deny, but that the *Mainwarings* of *Warmincham*, were also owners of *Over-Peover*, or the most part thereof, until *Sir Roger Mainwaring* gave *Peover* to his younger Son *Sir William Mainwaring*; presently after which time, the Line of the *Mainwarings* of *Warmincham* failing, the *Mainwarings* of *Peover* became Heirs male to those *Mainwarings* of *Warmincham*, *Sir Warine⁸ Mainwaring*, Son of *Sir Thomas Mainwaring*, Son of the said *Sir Roger*, dying without Issue Male. And though he may pretend, that he did not mention those *Mainwarings* of *Warmincham*, who also were owners of *Peover*, because they (as he supposeth) then lived at *Warmincham*, in another Hundred; yet in his said Book he gives an account of the Descents of some, who had Estates in *Bucklow* Hundred, though he then looks upon them as living in other Hundreds.

[Page 8.]

4. He tells us (page 332) that *Margery Praers*, one of the Coheirs of *William Praers* of *Baddeley*, (and Sister to *Joan* the other Coheir, who was Wife to *William Mainwaring*) married *John Honford* of *Honford*, and afterwards that she married *Hugh*

Holt, 33 *Edw.* 3. but had no Issue by *Holt*, and that she had Issue by *John Honford* a Son named *John Honford*, who was a Bastard: But he is mistaken in saying that *Holt* was her second Husband; for *Margery* had her Bastard *John Honford*, before she had any Husband, and she was Wife to *Hugh Holt*, 33 *Edw.* 3. and she was Wife to *John Honford* 46, 47, and 50 of *Edw.* 3.

[Page 9.] 5. In the 332 page, he takes no notice, that *William Leigh* of *Baggeleigh*, who ⁹married *Joan*, the Daughter of *William Mainwaring* of *Peover*, in the 33 of *Edw.* 3. was a Knight; and yet, as you may see in his 217 page, he knew the said *William* to be a Knight.

6. He says in his said 332 page, That *William Mainwaring* the Elder, who lived 33 *Edw.* 3. sealed with three Bars, with a *Lion passant in Chief*; whereas the Coat of Arms was *Argent*, two Bars *Gules*, on a *Chief of the Second*, a *Lion passant, gardant Or*; and so it is cut in his own Book, page 331.

7. He takes notice (page 332.) that *William*, younger Son of *William*, Son of *William Mainwaring*, had a Daughter named *Ellen*, who was married to *Adam Glasebroke*: But he omits *John* and *Margery*, Brother and Sister to the said *Ellen*.

8. He says (page 332.) that *William* Son of *Roger Mainwaring* died about 12 or 13 of *Edw.* 3. whereas I find him Party to a Deed made on the Eve of S. *John Baptist*, 14 *Edw.* 3. and how long he lived after, I believe no man can tell.

[Page 10.] 9. He says (page 332.) that *William Mainwaring*, Son of *William Mainwaring* and *Joan Praers*, did divide the Lands of *Baddcley* between *John Mainwaring* ¹⁰his Half-brother, and *John Honford*; whereas he gave several thousand Acres of Land, which came by his Mother, and of the which the Demesne of *Baddcley* was part, solely to his said Brother *John*, and onely divided the remainder of the said Lands; and the Will which directs that Division, doth also direct the disposal of the other Lands.

10. He takes notice (page 333.) that *William Mainwaring*'s Seal, 17 *Rich.* 2. had the Impression of his Coat and Crest, to

wit, in an *Escococheon*, two Bars onely; and corner-ways, on the Dexter Angle, on an Helmet, an *Afs-head cooped*, &c. which (he says) his Heirs have ever since continued, to wit, *Argent two Bars Gules*; the Crest, *An Afs-head cooped, proper*: And tells you, that the said *William* died 1399, 22 Rich. 2. Whereas all the *Mainwarings* that I can find, who have lived since the said *William*, have either given the *Afs-head on a Torce and Halter'd*, or else the *Afs-head Erased*, or else the *Afs-head unhalter'd, and within a Crown*.

11. He says (*page 333.*) that *William Mainwaring* (the Husband of *Katherine Belgrave* and *Clementia Cotton*) fetled his ¹¹Estate, upon his departure out of *England* towards *Guien*, 17 R. 2. 1393. and afterwards made his Will, 1394. Whereas the said settlement made 17 R. 2. was also a Will, and was but of part of the Estate which he had by his Mother; and besides that and the other Will, dated 1394. he made a third Will, 1399, by which last Will he gave directions to his Feoffees how to dispose of all his Mothers Lands; but he disposed not of those Lands he had as Heir to his Father, by any of the said Wills.

[Page 11.]

12. He says (*page 333.*) that *John Mainwaring* of *Over-Peover* married *Margaret*, the Widow of Sir *John Warren* of *Poynton* in *Cheshire*, and Daughter and Heir of Sir *John Stafford* of *Wigham*, about 13 Rich. 2. For Sir *John Warren* died the Tenth of Rich. 2. But how Sir *John Warren*'s dying in the Tenth of Rich. 2. doth prove, that the said *John Mainwaring* married his Widow, about the Thirteenth of Rich. 2. I confess I do not understand.

13. He says (*page 333.*) that *John Mainwaring* was made Sheriff of *Cheshire*, 4. Hen. 4. and continued Sheriff 5 H. 4. and 6 H. 4. but he omits his being Sheriff 7 H. 4.

14. He says (*page 333.*) that *John Mainwaring* died 11 H. 4. ^{1410.} whereas he was certainly dead in the year 1409. [Page 12.]

15. He says (*page 334*) that *Margery* survived her Husband *Randle Mainwaring*, and erected a Stone-Chappel on the South-side of *Over-Peover* Church, with the two Monuments therein for

her self and her Husband, 1456. Whereas the said *Margery* was certainly dead in the year 1449. and died several years before her said Husband, as you may see in the 75, 76, 77, and 78 pages of my *Defence of Amicia*, printed in the year 1673.

16. He says (*page* 334.) that Sir *John Mainwaring* of *Over-Peover* died about the very end of *Edw. 4.* Reign; but the said King *Edward* died in the Twenty-third year of his Reign, and the said Sir *John Mainwaring* was certainly dead on the 14 day of *April*, in the Twentieth year of the said Kings Reign, as appears by a Precept to the *Escheator of Cheshire*, bearing the said date.

17. He omits in the 335 *page*, *Agnes* the Daughter of *John Mainwaring* of *Peover*, Esq; and Wife of Sir *Robert¹³ Nedham* Knight; and this, although he had been informed of a two-fold undoubted proof thereof, as you may see in the 79 and 80 pages of my *Defence of Amicia*, before mentioned.

18. He positively says (*page* 335) that *Katherine* the Daughter of Sir *John Mainwaring*, was married to *William*, Son of *Humphrey Newton* of *Pownall*, 13 H. 8. 1521. But the Deeds concerning those Lands which she was to have in Joynure (at which time she was certainly unmarried) were dated the first and second of *March*, in 13 H. 8. which was in the year 1521. according to the account of the Church of *England*, but in the year 1522. according to the *Julian* account. Now the Dominical Letter being that year *E.* and the Golden Number 3. the second of *March* would be *Shrove-Sunday*, and *Easter-day* on the twentieth of *April*; and *Lent* being a time not usual for Marriage, and especially in the time of King *Henry* the Eighth, in all probability the Marriage was not till after *Easter*; and if so, it was not until the year 1522. However there is no certainty of what Sir *Peter* there says.

[Page 14.] 14 19. He also (in the 335 *page*) tells us, how Sir *John Mainwaring* was Sheriff of *Flintshire*. 6 H. 8. 1514. but takes no notice of his being Sheriff there in the 23 and 24 years of King *Hen. 7.*

and 1 *Hen.* 8. and 2 *Hen.* 8. and probably ever from then till the end of 6 *Hen.* 8.

20. He says (*page* 335.) that Sir *John Mainwaring* died 8 *H.* 8. 1515. Whereas no part of the eighth year of King *Hen.* 8. was in 1515. neither did Sir *John* die in the eighth year of the said King.

21. He says (*page* 335.) that Sir *Randle Mainwaring*, after the death of his first Wife, married *Elizabeth*, the Daughter of Sir *Ralph Leicester* of *Toft*, 6 *Edw.* 6. 1551. but he cannot prove that they were married until the year 1552.

22. He says (*page* 336.) that *Philip Mainwaring* of *Over-Peover*, Esq. fifth Son of Sir *John Mainwaring*, and Brother and next Heir-male to Sir *Randle*, married *Anne*, Daughter of Sir *Raufe Leicester* of *Toft*; and tells us from his Monument the time of the said *Philip's* death. But though the rest of them died young, yet *Philip* was born the seventh, and not the fifth Son of the said Sir *John*, ¹⁵as appears by the Monument of the said Sir *John*, which is in the same Chappel that the Monument of the said *Philip* is in.

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23. He says (in the same page) that the Herald in the Reign of Queen *Elizabeth*, made for the Coat of the said Sir *Randle* the elder, *Barry of twelve pieces, Argent and Gules*. But the Coat which the said Sir *Randle* did then usually bear, was, *Argent six Barulets Gules*, which the said Sir *Randle* did give, because the most antient of the Deeds of the *Mainwarings* were sealed with *six Barulets*; but the *Mainwarings* since then have again given *two Bars* only, according to what they had done of a long time before, the *two Bars* having been also used to Deeds without date: Also in the 330 page, you may read, that Sir *Peter* knew the antient Coat to be *six Barulets*, and not to be *Barry of twelve pieces Argent and Gules*.

24. He also says (in that same page) that Sir *Randle Mainwaring* the elder, built the Hall of *Over-Peover* a new, 1586. the Fabrick being now of Brick; but one part of the said House was built 1585. and another part was built 1586.

[Page 16.]

1625. He says (*page 336.*) that Sir *Philip Mainwaring*, youngest Son of Sir *Randle Mainwaring* the elder, of *Peover*, Knight, was Secretary of *Ireland* to the Earl of *Strafford*, 1638. Whereas the said Sir *Philip* was his Majesty's Secretary of State there.

26. He says (*page 336.*) that Sir *Philip Mainwaring* died, 2° die *Augusti*, 1661. at *London*; But he died at *Westminster*, at Sir *Philip Warwick's* House, which is in or near to St. James's Park.

27. He also says (in the same page) that *Anne*, third Daughter of Sir *Randle Mainwaring*, of *Peover*, the younger, (which *Anne* was Cousin-Germain to the said Sir *Peter*) married *Robert Brierwood* of *Chester*, Counsellor at Law, after, Sir *Robert Brierwood*. Knighted 1643. and Judge of three Shires in *Wales*: But he takes no notice that he was made Sergeant at Law 1640. nor that he was made one of the Judges of the *Kings Bench*, 1643. Indeed amongst the Recorders of *Chester* (*page 187.*) he tells us, that the said Sir *Robert* was made Judge of the *Common-Pleas*, and Knighted at *Oxford* 1643. But the said Sir *Robert* was never

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any Judge of the Court of *Common-Pleas*, but the King did constitute him, *unum Justiciariorum ad placita coram Rege*, in the year 1643. that is, he then made him one of the Judges of the *King's Bench*, or *Upper Bench*: But it seems Sir *Peter* did not know the meaning of the aforesaid words. He also (in the 334 *page*) says, That Sir *John Nedham*, who married *Margaret*, the Daughter of *Randle Mainwaring*, was *Justiciarius de Banco*, and Judge of *Chester*, 1 *Edw. 4.* that is, he was then one of the Judges of the Court of *Common-Pleas*, and Judge of *Chester*; for he was *Justiciarius de Banco*, in the year 1457. 35 *Hen. 6.* and he was Judge of *Chester* 1 *Edw. 4.* But as Sir *Peter* did mistake *Justiciarius ad placita coram Rege*, to be a Judge of the *Common-Pleas*; so I suppose he did there erroneously take *Justiciarius de Banco* to be a Judge of the *King's Bench*, or else I believe he would have told us, that the said *John Needham* was afterwards made a Judge of the *King's Bench*; for he had a Patent to be one of the *Judges* of that Court 1472. 11 *Edw. 4.* as you may see in the *Chronica*

Series, at the end of Mr. Dugdale's Origines Juridiciales, printed in the year 1666.

¹⁸ 28. He says (*page 336.*) That *Philip Mainwaring Esq; Son and Heir of Sir Randle the younger, married Ellen, Daughter of Edward Mynshul of Stoke, Esq; 20 Jac. 1622.* But the said *Philip* and *Ellen* were married 1617. and their eldest Son *Randle* was born the 25 of *July*, 1619. and their second Son *Philip* was born the 25 of *May*, 1621.

[Page 18.]

29. He says (*page 337.*) that *Mrs. Ellen Mainwaring* built a stately Stable and Dove-house at *Peover*, in the year 1654. But the said Stable was built in the year 1653. and finished within 1654. and the said Dove-house was not built till the year 1656.

30. He says (*page 336.*) That *Margaret Daughter of Sir Randle Mainwairing the younger, and Wife of Henry Birkenhead,* died at *Chester* 25 *July* 1661. but she died on *Saturday* the 20 of *July* 1661. and was buried at *Backford* on *Tuesday* the 23 day of the said moneth.

I also think good (having this opportunity) to remind the Reader, how in the 63 page of my Answer to Sir Peter's two Books, I did declare, That since it did appear, that he was resolved to have ¹⁹the last word, although he had nothing new to say, that if what he did after that time write, did prove no more to the purpose, than what he had said in his said two Books, that I would not appear in Print against him any more, but would chuse to vindicate my Grandmother and my self by word of mouth, whensoever I should have an opportunity so to do. And for this reason, when Sir Peter did, within a few days after, print his *Advertisement* to the Reader, because it did contain little, but a mistake of his, of a Record concerning *Lhewellin Prince of North-Wales*, I did thereupon forbear to publish that Answer which I did write to the same. Since that time Sir Peter hath put out at once no less than three Books concerning the same Subject, viz. His Second *Reply*, his *Peroratio ad Lectorem*, and a *Third*, which he calls, *The Case of Amicia truly stated*; which

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certainly was a great deal of lost labour, if his former Books had made the Case so clear, as he all along hath pretended they did.

[Page 20.]

In all those Books which Sir *Peter* hath written upon this occasion, the ²⁰ same things are said over and over again, so very often, as I believe the like will not be found elsewhere; so that it would be pleasant, if some person, who hath little else to do, would take an account how many times he hath repeated the same things. Since he did declare in his first *Reply*, that he had taken his leave for ever of this Controversie; he hath printed no less than seven several things, and four of them since I did appear publickly against him; and in the end of his *Peroratio ad Lectorem*, he says he hath done, if I have done, which is as much as to say, That so long as I print any thing concerning *Amicia*, he will never have done: For this cause, though I intend speedily to write an Answer to that part of the Record, which is mentioned in the 76 page, and the first part of the 77 page in his said *Peroratio*, yet I do not design it at present for the publick Pres; however, I shall willingly shew both it, and my Answer to his *Advertisement* to the Reader, to all knowing persons, who shall come to me, and desire to see the same; and I do not doubt but to give them full satisfaction ²¹ of Sir *Peter's* mistakes, concerning both those Records, and that they do not prove those things which he doth conceit they do.

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As for that Letter of mine, which Sir *Peter* doth speak of in the 63, 80, 82, and 84 pages in his *Peroratio ad Lectorem*, it is possible I might write to a Kinsman of his and mine, to acquaint him how Mr. *Dugdale* had delivered his Opinion in Print on my side; as also what I had received from a very good hand, concerning several of our Judges; but I know nothing at all of my Letter being left with Mr. *Throp*, the Stationer in *Chester*, to be divulged and made known to every man in Town. And I am sure I did not write, that Mr. *Dugdale* had moved the Judges in the case; for Mr. *Dugdale* was not in *London* when that Meeting

was, neither did he or I know of it, till that Meeting was past, and it was occasion'd by Sir *Peter's* Appeal to them: But though he once thought the Judges of this Land fit persons to determine this Controversie, yet he now says in the 81 page in his *Peroratio ad LeElorem*, That this *Question* ²² hath nothing of any Law in the case, and therefore unfit to be put to our Reverend Judges for their Opinions, unless all the Records and Histories touching the same, together with the Reasons alledged on both sides, were produced before them: It is more proper for them to judge onely upon the point of Law. Now how they can judge upon the point of Law, if there be nothing of any Law in the case, may be perhaps very difficult for any but Sir *Peter* to tell.

[Page 22.]

He also in the 66 and 67 pages of his said Book, says, That Mr. *Dugdale*, some years ago, did draw up my Pedigree, wherein he put *Amicia* without the distinction of a Bastard, and is therefore the more concern'd to stickle for me, in this contest: But though he deal not well with me, in charging me unjustly with many things in his former, and also in these his last Books, (which those that are Learned will easily discover) yet Mr. *Dugdale* is a person of that knowledge and integrity, that I believe he cannot perswade any one man, that Mr. *Dugdale* doth stickle for me herein upon that account. And Sir *Peter* himself very ²³ well knows, that long before that Pedigree of mine was drawn, Mr. *Dugdale* was of the same judgment concerning *Amicia*, of which he is now.

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I do also expect, that Sir *Peter* will write several Books against what I have here published, about his Mistakes concerning my Family; which if he do, I shall not go about publickly to anwer any of them, because I know I should then undertake a work which would never have an end: But if any one will come to me, I will shew proof of all the Uncertainties, Omissions, and Mistakes, which I have charged Sir *Peter* withall, and they are not any of them to be imputed to the Printers negligence; for Sir *Peter* rectifies some Omissions and Errors in his *Historical*

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Antiquities, at the end of his *Answer to my Defence of Amicia*, and tells the Reader, That those *Amendments will set him straight*, together with the Correction of the Errata's of Printing, committed by the great negligence of the Printer, which are now mentioned and rectified by a distinct page, at the end of the said Book. And there are none of those which I charge him with, ²⁴mentioned in either of the said places, except that about the Chappel at Peover, which the said Margery, the Wife of Randle Mainwaring, did erect; and that about Agnes Mainwaring, Wife of Sir Robert Nedham; both which he did not rectifie, until I told him of those Errors, in the latter end of the first Book, which I did write.

Baddesley, August
4. 1676.

T. M.

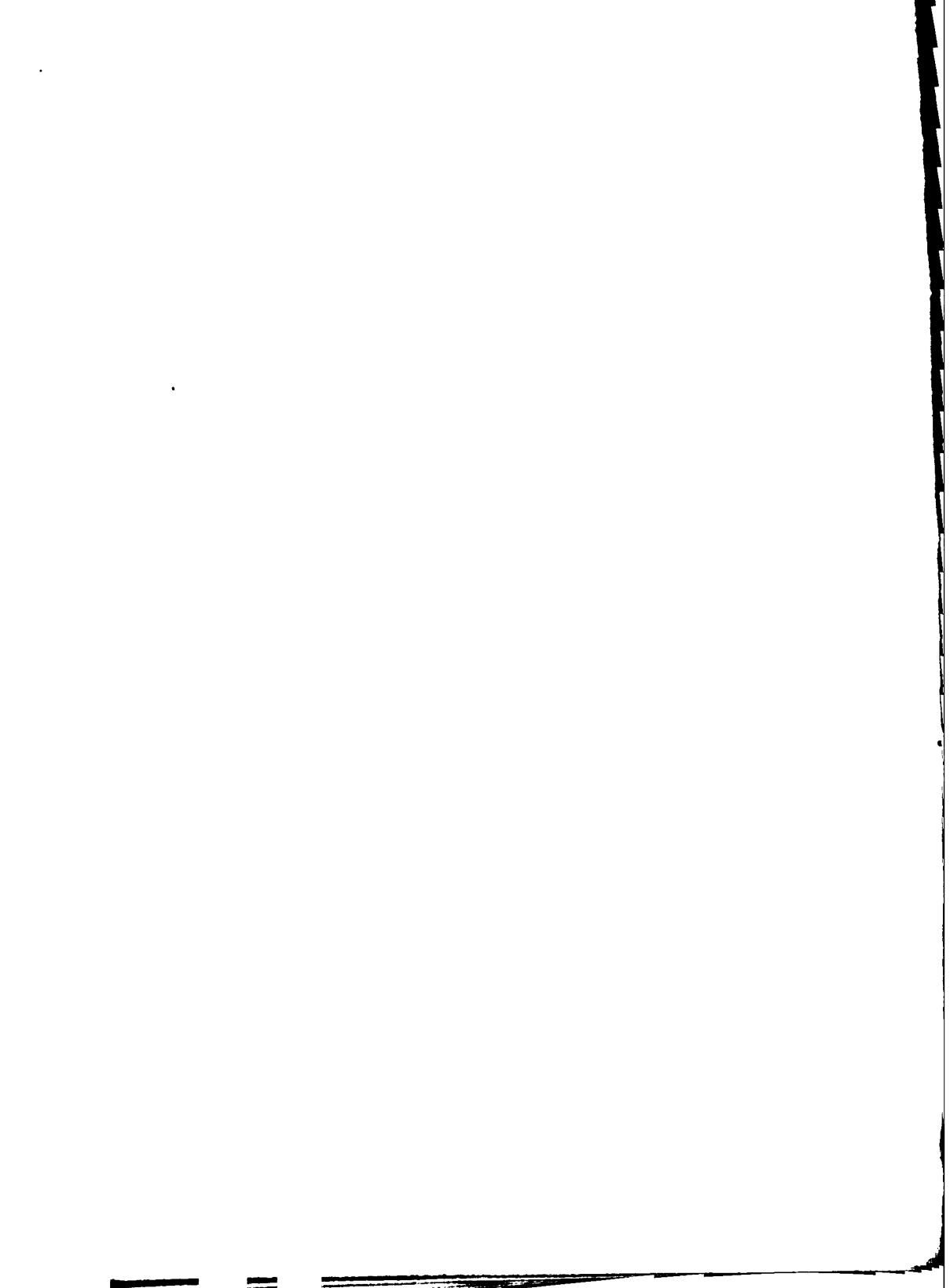
F I N I S.

A N
A N S W E R
T O
Sir *Thomas Manwaring's*
B O O K, Intituled,—
An Admonition to the
R E A D E R of
Sir *Peter Leicester's* Books.

WRITTEN
By the same Sir *Peter Leicester*.



Printed in the Year, 1677.





'An Answer to Sir Thomas Man- warings Book, &c.

[Page 1.]

In the first place, I desire the learned and ingenious Reader to take notice of the very first words of Sir *Thomas Manwaring's* Admonition — [That you may know *Hercules* by his Foot :] whereby he would insinuate the blasting of my Credit and Reputation, even before he begins one word of his Book ; and it is all one, as if he should have said in downright words, take heed of believing any thing which Sir *Peter* writes : For here I will shew you the Partiality, Omissions, Uncertainties, and Mistakes of the said Sir *Peter*, in those two Sheets of his Historical Antiquities, in which he writes of ²the Township of *Over-Peever*, which are so numerous, that little credit is to be given to any thing he writes elsewhere ; for *ex pede Hercules*, and it is no matter what he writes of the Bastardy of *Amicia*, or any thing else : See here the scope of his design.

[Page 2.]

Had he given me notice of my Mistakes in private, it would have shewed more handsomly in him, and more acceptable to me ; but he now publisheth to the World his own Malignancy, which will be a greater dishonour to himself than these pitiful exceptions can be a disparagement to me, for my Reputation is out of his reach, *Cum tamen non mordeat, oblatrat*.

But let us now take a view of these his pitiful exceptions which he would so unhandsomly charge upon me as Errours.

To the I. Pag. 4

[Page 3.] Here he saith that in *Pag. 330* of my Book, I call *Ranulphus* in *Dooms-day-Book* the supposed Ancestor of the *Manwarings*: But *pag. 208.* I call *Odard* the undoubted Ancestor of the *Duttons*: Now what reason I can have for that, except my Partiality, he cannot imagine.

My Answer.

Yes, Reason enough for it, though he cannot or will not imagine it :

For I have seen sundry Deeds of the first Age after the *Norman-Conquest*, namely made in the time of King *Henry the first*, wherein I find *Hugh* the Son of *Odard* so stiled, and *Hugh* Son of *Hugh* Son of *Odard*: See *Pag. 264.* of my Book, and *Pag. 117. sub Anno 1119.* and also *Pag. 250.* whereas I should be glad to see any one Deed of that Age, mentioning or calling *Richard Mefnilwarin* Son of *Ranulphus*.

[Page 4.] Again, the ancient Roll of the Barons of *Halton* which I have seen and transcribed in one of my Manuscripts, noted *Lib. Cap. fol. 84, 85.* (which Roll seemed to be written ⁴in a Character of 300 Years standing at the least,) saith thus — *Ab ipso Hudardo venerunt omnes Duttonienes*. See also *Monasticon Anglicanum*, Vol. 2. pag. 187. and also *pag. 249.* of my Book, but I never knew nor heard of any such ancient Roll or Record, wherein it is said — *Ab ipso Ranulpho venerunt omnes Manwaringi*.

Again, I have seen the ancient Sword, called at this day *Hudards-Sword*, and is yet in the possession of the Heirs of *Dutton* of *Dutton*, and for many Ages hath been passed as an Heir-Loom from Heir to Heir for many Generations; and I have seen some Wills of the *Duttons*, giving the same as an Heir-Loom to the Heir by that name of *Hudards-Sword*, which by tradition received hath been constantly preserved by the Heirs of that Family with great veneration, the like (I believe)

cannot be shown by any Family of this County, or scarcely in *England*. See in my Book, *pag. 250*. I say not this to extenuate any Family, but ⁵to shew the Antiquity of this Family which hath been seated at *Dutton* even from the Conqueror's time to this present, and continued in the name of the *Duttons*, until in our days it devolved by a Daughter and Heir unto the Lord *Gerard of Gerards-Bromley in Staffordshire*.

[Page 5.]

And therefore I might well call *Odard* the undoubted Ancestor of the *Duttons*, and by much surer proof than (I believe) can be produced to prove the *Manwarings* to be descended from *Ranulphus* aforesaid.

Neither do I look upon the Lands coming to either of the Families to be ne're so sure a proof as what I have mentioned above; for possibly Lands might descend by a Daughter and Heir, or by Purchase, and yet *Richard Manwaring* might not be Son of *Ranulphus*, as is certainly recorded of the *Duttons* from *Odard*.

Howbeit, I am so much satisfied with the Lands found in Possession of the *Manwarings*, in the very next Ages after *William the Conqueror*, that I suppose the same ⁶*Ranulphus* to be the Ancestor of the *Manwarings*, but I cannot say it is so certain as the other:

[Page 6.]

What reason now hath Sir *Thomas* to charge me with Partiality in the Case?

To the 2. Pag. 6.

Here he saith, that in the same 330 *Pag.* I tell him of two Places or Hamlets in *Over-Peever* anciently called *Cepmunde-wich*, the other *Fodon*, whereas there were seven such places there, which he reckoneth up.

Answer.

But Sir *Thomas* mistakes himself therein, for neither *Radbroke*,

[Page 7.]

nor the other four there mentioned by him, were called Hamlets, as *Cepmunderwich* and *Fodon* were: See *Pag. 331.* of my Book, for although there might be some parcels of Land in *Over-Peever*, so called, either Fields or Tenements, yet were those parcels never called Hamlets in any Deed that I ever saw as yet: Now Hamlets are as it were a Ville within a Ville, and are places more conspicuous, and usually containing a greater quantity of Land than a private Place, Field, or Tenement, gaining certain names as those did, and other Places also might do; nor was it fit for me to take notice of all such inconspicuous places in my Book, though I did take notice of the Hamlets; for that were to make my work endless, and to stuff it with trifles: But I did take notice of *Radbroke*, because it was a Freehold at this day, and now not belonging to *Manwaring*, which made me the rather to mention the same; and though it be *locus cognitus* in *Over-Peever* at this day, yet no Hamlet at all.

To the 3. Pag. 7.

[Page 8.]

Here he tells us, that I have left out in the Pedegree of the *Manwarings*, (*Pag. 331.*) *Ranulphus* men-⁸tioned in *Doomsday-Book*, *Richard Mesnilwarin*, *Roger de Mesnilgarin*, or *Mainwaring*, and *William* and *Randle* his Sons, *Roger de Menilgarin* or *Mainwaring*, *Sir Ralph Manwaring*, *Sir Roger Manwaring* his Son.

Answer.

But if he had viewed well *Pag. 330.* of my Book, he might have found the last *Roger Manwaring*, and *Ralph Manwaring* his Father sometime Judg of *Chester*, to have been mentioned there, but that either of them were Knights, it doth not certainly appear to me, as in my lesser Book I have formerly given my reasongs; and for the descents here mentioned before, *Ralph Manwaring*, I think he himself will have much ado to put them

into right order as they ought to be ; I am sure I cannot ; and though they were Lords of *Over-Peever*, or the greatest part thereof, yet certainly none of them lived at *Over-Peever*, till *William⁹ Manwaring* had *Over-Peever* given him by *Roger Manwaring of Warmingham* his Father in the reign of *Henry the third*, and so feated himself here in *Bucklow-Hundred*, where his Heirs have ever since continued to this day.

[Page 9.]

However, my design was only to show who held every particular Town in *Bucklow-Hundred* from the time of *William the Conqueror* to this day, or so far forth as I could discover, together with the Pedegrees of the better sort of Families seated within that *Hundred*, or so many of them as my leisure would permit me to go through, the other *Hundreds* being out of my intended task ; and this he takes notice of himself, *Pag. 8.* so that having shewed how the *Manwarings of Peever* first branched out from the *Manwarings of Warmingham*, it was only suitable to my design to bring down that descent to this day. The like I have done of the *Savages of Clifton*, and of the *Brookes of Norton*.

¹⁰ Yet I cannot but take notice how he calls the first *William Manwaring of Over-Peever*, and the first of the *Manwarings* who seated himself there, by the title of *Sir William Manwaring* ; whereas it is most certain that he was no Knight, nor can any Deed be produced wherein he was ever subscribed as a Witness, with the word *Domino* prefixed, as *Domino Guillielmo Manwaring de Peever*, if *Sir Thomas* would but survey his own Deeds with an impartial eye :

[Page 10.]

For if he finds any *William* subscribed *Domino Guillielmo Manwaring* in that Age, it is to be understood of *Sir William Manwaring Parson of Wernith*, who was contemporary with the other *William Manwaring of Peever*, and such Deed or Deeds I my self have seen : See *Pag. 330.* of my Book, and my Answer to the defence of *Amicia* *Pag. 7, 8.* also my first Reply, *Pag. 73.* and my Addenda, *Pag. 16, 17.*

But the first Knight of the Family of the *Manwarings* of

[Page 11.] *Over-Peever*, ¹¹ was Sir *John Manwaring* of *Peever*, living in the time of King *Henry* the sixth, and died about 20. *Edw.* 4.

So that hitherto I have committed no errour at all in these things he chargeth upon me.

To the 4. Pag. 8.

In this I confess I may be mistaken, in saying that *Holt* was the second Husband of *Margery Praers*, since he finds *John Honford* was her Husband 46, 47. and 50. *Edw.* 3. for then *Honford* must needs be her second Husband, and *Holt* the first, which by long pawing on his own Deeds, he might the better discover.

To the 5. Pag. 8, 9.

William Leigh of *Baggiley* was no Knight 33. *Edw.* 3. when he married *Joan Manwaring*, for he was then very young and under age, and therefore no errour in what I there have said : Howbeit he was afterwards a Knight, ¹² which I did take notice of in his due place.

To the 6. Pag. 9.

He that tricked out the Seal for me, saw as well as my self, that the Seal was three Bars, and not two Bars, to the best of our Judgments ; but *William Manwaring* the younger, did in his Seal use only two Bars 17. *Richard* 2. when the Heirs Males of the *Manwarings* of *Wormincham* failed, and also left out the Lyon in chief, as I have there truly observed.

To the 7. Pag. 9.

I must needs omit *John* and *Margery* Brother and Sister to the said *Helen*, which I then knew nothing of, and possibly other things may be hereafter discovered, which ought not to be im-

puted as an error to me when I writ my Book, but so far as I writ, was true.

¹³Besides, It was not my design to collect all the Children of the younger Sons : Now these were the Children of a younger Son. It was only my task to collect the Wives and Children of the right Heirs of each Family in *Bucklow-Hundred*.

[Page 13.]

To the 8. Pag. 9.

He faith here, that he finds *William* (Son of *Roger Manwaring*) living 14. of *Edw.* 3. and how long after, he believes no Man can certainly tell.

Now I said he died about 12, or 13. of *Edw.* 3. which expression of mine shews only a guess, without an exact certainty ; a very poor exception to be put in Print.

To the 9. Pag. 9, 10.

Here he faith, that I said *William Manwaring* the younger divided the Lands of *Baddiley* between *John Manwaring* his Half-Brother, and ¹⁴*John de Honford*; but (faith he) *William* gave the Demain of *Baddiley* solely to his Half-Brother, and divided the remainder of the Lands of *Baddiley*:

[Page 14.]

Why then he divided the Lands of *Baddiley*.

To the 10. Pag. 10.

Here he faith, that all the *Manwarings* that he can find, have either given for their Crest an *Aff-head* on a *Torse*, and haltered, or else an *Aff-head* erased, or else an *Aff-head* unhaltered, and within a *Coronet*.

Answer.

So that he makes here no certain Crest at all to his Family : A very worthy exception : But they have given the *Aff-head*

someway, and it is certain, that *William Manwaring* the younger in his Seal, 17. of *Rich. 2.* did then give the *Aff-head* couped, which his Heirs have, or should have continued.

[Page 15.]

To the 11. Pag. II.

Here he faith, that the said *William Manwaring* did not by any Will dispose, but of a part of his Estate, namely of the Lands which came by his Mother, nor did he by any Will settle the Lands which he had as Heir to his Father.

Answer.

Indeed I neither said he settled the Lands of the one nor the other, but only that he settled his Estate, which if it were either of his Mothers Lands, or Fathers Lands, I have said truth ; nor is it any matter whether of the one or of the other, to my purpose.

To the 12. Pag. II.

Here he faith, that he cannot understand how the dying of Sir *John Warren* 10. of *Rich. 2.* doth prove that *John Manwaring* married ¹⁶his Widow about 13. of *Richard* the second.

[Page 16.]

Answer.

But it is probable to be about that time, for it may well be imagined, that it must be some competent time after Sir *John Warren's* death, nor can any Man expect punctual proof of every thing in these cases ; and if Sir *Thomas* cannot mend it, it may stand, till better proof appear.

To the 13. Pag. II.

Here he faith, that I have observed that the said *John Man-*

waring was Sheriff of Cheshire 4, 5, and 6, of Henry 4. but have omitted 7, of Henry 4.

Answer.

Certainly, this is a childish exception, as most of the other be: Is it possible that any Man that ever ¹⁷ did write, or shall write hereafter of matters of this kind, should comprehend every particular? and this is not worthy the labour of mending, and is well enough without it.

[Page 17.]

To the 14. Pag. 12.

Here he saith, that *Pag. 333.* I say *John Manwaring* died 11. of *Henry 4.* 1410. whereas he was certainly dead in the Year 1409.

This is also a pitiful exception: why doth he not now produce authority for the exact time of his death?

To the 15. Pag. 12.

Here he saith, that *Pag. 334.* I said *Margery* survived her Husband *Randle Manwaring*, whereas she was certainly dead in the Year 1449, and died several Years before her Husband.

¹⁸ *Answer.*

[Page 18.]

But this mistake I rectified in Print long since, at the end of my said Book, among the Errata, and also at the end of my Answer to the defence of *Amicia*, so soon as I knew the certainty of it, and therefore ought not to be charged upon me.

To the 16. Pag. 12.

Here he saith, that I said Sir *John Manwaring* died about the very end of *Edw. 4.* his Raign, but he was dead for certain the 14. of *April.* 20. of *Edw. 4.*

Answer.

Had I but said towards the latter end of *Edw. 4.* I had not much erred, and I could not put down the exact time till I knew it : Now *Edw. 4.* raigned but 22 Years in all.

[Page 19.]

19 To the 17. Pag. 12, 13.

Here he saith, that I omitted *Agnes* Daughter of *John Manwaring* of *Peever* Esquire, and Wife of Sir *Robert Nedham*.

Answer.

Indeed at first I made some doubt of the truth hereof, because I found in my Lord *Kilmorey's* Pedegree, under the *Herald's* Seal, that the said Sir *Robert Nedham* married *Maud* Daughter of Sir *John Savage*: But as soon as I found out the truth, I rectified that omission in Print, at the end of my Answer to the defence of *Amicia*, Pag. 87, as will appear by the said Book, Printed 1673, and did also blot out that Match with *Savage* in my own Book, in the Pedegree of that Family, pag. 233. and yet he imputes it now again, as if I had not mended the same, which is unjustly charged here.

[Page 20.]

20 To the 18. Pag. 13.

Here he saith, that *Katharine Manwaring* married *William Newton* probably 1522, and I had said it was 1521, so that there was no certainty of what I there said.

Answer.

I say it is as probable they were married 1521, as 1522, and can absolute certainties be always found out in matters of this nature in every particular? therefore let it stand till he proves it to be an error.

To the 19. Pag. 14.

Here he saith, that *Pag. 335*, I say Sir *John Manwaring* was Sheriff of *Flintshire* 6. of *Henry 8.* but I take no notice that he was Sheriff there 23 and 24 of *Henry 7,* and also 1 and 2 of *Henry 8.*

21 Answer.

[Page 21.]

What if I did not? It is true what I have said, and well enough without it: for (as I said before) it is not possible that I should comprehend every particular, nor any Man else; and shall my Credit of writing Truth be impeached by him for this, because I cannot know every thing? therefore I have committed no error herein.

To the 20. Pag. 14.

In the same *Pag. 335*, I say Sir *John Manwaring* died 8. of *Henry 8.* 1515. and no part of 8. *Henry 8.* falls in *Anno 1515.*

Answer.

What of all this? It perhaps were better placed to be *Anno 1516, or 1517.* let him find out the absolute time, and I will mend it.

22 To the 21. Pag. 14.

[Page 22.]

Here he saith, that *Pag. 335.* I say Sir *Randle Manwaring* after the death of his first Wife, married *Elizabeth Daughter of Sir Ralph Leicester of Toft* 6. of *Edw. 6.* 1551, but (faith he) I cannot prove they were married till the Year 1552.

Answer.

Therefore let it stand *donec probetur in contrarium*, it may yet be so for ought I know.

To the 22. Pag. 14.

Here he faith, that *Pag. 336.* I say *Philip Manwaring* Esquire was the fifth Son of Sir *John Manwaring*, but he was the seventh Son born, and not the fifth, as appears by the Monument of the said Sir *John* in *Over-Peever Church*, wherein the Monument of the said *Philip* is also.

[Page 23.]

23 Answer.

It may be so, but they all died young, and *Philip* became Heir: If it be an errour, it is but a small one, and not material.

To the 23. Pag. 15.

Here he confesseth what I say to be truth, that the Herald in the raign of Queen *Elizabeth* made for Sir *Randle Manwaring's* Coat, Barry of twelve pieces, Argent and Gules: See *Guillims Heraldry*, *Pag. 373.* but (faith he) the *Manwarings* since then have again given two Bars only; and the Coat which the said Sir *Randle* did then usually bear, was six Barrulets; and that I knew the ancient Coat to be six Barrulets *Pag. 330.* and not Barry of twelve pieces.

Answer.

[Page 24.]

It is true, that I said the ancient ²⁴Deed of *Roger Manwaring* made in the raign of King *Henry* the third, was sealed with an Escocheon of six Barrulets, *Pag. 330.* but that Coat devised for the said Sir *Randle*, *Guillim* the Herald calls it Barry of twelve pieces: I know not the criticism in these terms of Heraldry, the Heralds themselves are the best Judges herein, and whether we call it the one, or the other, it is not a Pin matter; nor have I committed any errour at all, for I there vouched *Guillim* for it.

To the 24. Pag. 15.

Here he saith, that I say the said Sir *Randle Manwaring* the elder, built the Hall of *Over-Peever* anew, 1586. but (faith he) part of the said House was built 1585, and another part was built 1586.

Answer.

Is not here a worshipful exception? It is more proper to ascribe ²⁵the time when it was built to the finishing of it, than when it was begun, for it was not all built till it was finished.

[Page 25.]

To the 25. Pag. 16.

Here he saith that *Pag. 336.* I call Sir *Philip Manwaring* Secretary of *Ireland* to the Earl of *Stafford*, 1638. whereas the said Sir *Philip* was his Majesties Secretary of State there.

Answer.

Here I confess my words were not well ordered, for I intended no more there, than that he was Secretary of *Ireland* in the time of the Earl of *Stafford*, then Lord Lieutenant there, 1638. But I have corrected this in my Notes at the side of my own Book long before, without any admonition from Sir *Thomas*.

²⁶ *To the 26. Pag. 16.*

[Page 26.]

Here he saith, that I say the said Sir *Philip Manwaring* died the seconf of *August* 1661, at *London*, but (faith he) he died at *Westminster*, in Sir *Philip Warwick's* House, which is in or near to St. *James's* Park.

Answer.

Is not here a ridiculous exception for a wise Man to make?

Do not we always say in the Country — such a Man died at *London*; whether he died at *Westminster*, or in any of the Suburbs, according to our common use of speaking, it is no matter for taking notice at whose House.

To the 27. Pag. 16, 17.

[Page 27.] Here he saith, that I take no notice that Sir *Robert Brierwood* was made Sergeant at Law 1640, nor ²⁷that he was made one of the Judges of the *Kings-Bench* 1643. and further saith, that *Pag. 187*, I say the said Sir *Robert* was made Judge of the *Common-Pleas* 1643. whereas he was never made Judge of the Court of the *Common-Pleas*, but of the *Kings-Bench*: And also, that *Pag. 334*. I say Sir *John Nedham* was *Justitiarius de Banco*, whereby he supposeth I did there erroneously take *Justitiarius de Banco* to be a Judge of the *Kings-Bench*.

Answer.

[Page 28.] For the first, It was not necessary nor material, to take notice in that place of Sir *Robert Brierwood's* being made either *Sergeant at Law*, or Judge of the *Kings-Bench*; for though it would have been fuller to have put them in here, yet it is no error without it: And I had before (as Sir *Thomas* here confesseth) among the Recorders of *Chester*, *Pag. 187*, there taken notice both of his being *Sergeant at Law*, ²⁸and being made Judge of the *Common-Pleas*; howbeit Sir *Thomas* saith, it should have been Judge of the *Kings-Bench*; be it so, I had it but by common fame.

Then as to Judge *Nedham*, I called him *Justitiarius de Banco*, *Pag. 334*. which he supposeth I do there erroneously take for a Judge of the *Kings-Bench*, yet doth he not find me any where so expounding it, so that he will suppose I have committed an error, before there be one.

To the 28. Pag. 18.

Here he faith, that *Pag. 336.* I say *Philip Manwaring* Esquire married *Helen Daughter of Edward Minshul of Stoke 20 Jacob.* 1622. whereas they were married 1617, 15 Jacob.

Answer.

This (I believe) is the most material mistake now charged upon ²⁹me, and I have now rectified the same, nor do I well remember now how it came about.

[Page 29.]

To the 29. Pag. 18.

Here he faith, that *Pag. 337.* I say that the Stable and Dove-house at *Over-Peever* were built by Mrs. *Helen Manwaring* 1654, whereas the Stable was built 1653, and finished within the Year 1654, and the said Dove-house was not built till the Year 1656.

Answer.

This is another Childish exception to put in Print, neither is the first of these any error at all.

To the 30, but misprinted 29. Pag. 18.

Here he faith, that *Pag. 336.* I say *Margaret Wife of Henry Birkenhead* died at *Chester* 25 of *July* 1661, but she died on *Saturday* the 20 of *July* 1661.

³⁰Possibly I might miswrite the number 25 for 20, or it might be mistaken by the Printer.

[Page 30.]

Thus have I taken a view of all his trivial exceptions particularly, and I believe such ridiculous things were never before published in Print by any wise Man, and most of them rather Cavils than real Errors, all which he ranketh under these four general Heads, Partiality, Omissions, Uncertainties, and Mistakes.

1. As to Partiality. I thank God I dare aver with a clear Conscience that I had not the least intendment of Partiality towards any; in a word, if there be any thing like Partiality in my Book, it is towards his Family, and whatsoever he chargeth me with in this respect, it is altogether unjust.

[Page 31.] 2. As to Omissions. No moderate Man who shall seriously weigh all circumstances of this nature, can judg it equal to impute such as errors; it is sufficient, that those things be true which I do mention,³¹ and so far as I did then know; for let any Man but consider, what multitude of particulars or things may be hereafter discovered in future Ages, which yet are in obscurity and appear not, especially in matters of this nature; nay, how many things could I my self now add to my Book, relating to *England, Scotland and Ireland*, and other things in this County, and Hundred (which I have collected since) in case it might receive a second Edition, which in this first were unknown unto me, and other things not well digested or considered by me, and God knows whether I may live to see a second Impression of it, or no; if I should, how many other things might yet be afterwards further discovered: Collections and Corrections would still be further necessary, a thing incident to all Books, especially of this kind; nor is it possible for a mortal Man to comprehend every particular, for still there will be a deficiency,³² though he take all the care imaginable: But these omissions charged upon me by Sir Thomas in his Admonition, (besides the unhandsomness of it,) are so inconsiderable, as they be not worthy an amendment most of them.

[Page 32.] 3. As to Uncertainties. Some things will still be in the dark for want of exact proof in remote Ages, either for punctual time or circumstances; neither are probable conjectures to be totally rejected herein, though the absolute certainty be not exactly known, and such may stand without any imputation of error, till the contrary do appear by good proof.

4. Lastly, as to Mistakes. *Humanum est Errare*, Wilful mistakes are unworthy, but mistakes through ignorance are more

pardonable, especially small mistakes and inconsiderable ; but these now charged upon me, would have been more handsomely done by a private admonition than a publick, and in Print ³³ too, and in such a malignant manner also.

[Page 33.]

And as to all the Omissions, Uncertainties, and Mistakes before mentioned, they are so immaterial, that if my Book should receive a second Impression, an indifferent Person would not think it necessary to amend above three or four of them, besides those already acknowledged and amended in Print by me before his Admonition published ; for though many of them may be observed by Sir *Thomas* for his private use, yet are neither worthy nor fit for a publick view, as to my design, and well enough without amendment.

Pag. 19. of his Admonition.

Here he reminds the Reader of his former words, *Pag. 63.* of his Answēr to my two Books, which he repeateth here, namely,— That since it did appear that I was resolved to have ³⁴the last word, although I had nothing new to say ; if what I did after that time write, did prove no more to the purpose than what I had said in my two Books aforesaid, he would not appear in Print against me any more, but would chuse to vindicate his Grandmother and himself by word of mouth, whensoever he should have opportunity so to do.

[Page 34.]

Answer.

Hereby he would now have the Reader to believe, that what I have writ lately in my seconde Reply, is nothing more to the purpose than what I had said in my two Books, otherwise he would again have appeared in Print against me, for he had left himself that Starting-hole ; but now he would chuse to vindicate his Grandmother and himself, by word of mouth, whensoever he had an opportunity ; so that he would now insinuate, that though

[Page 35.] he had promised to appear no more ³⁵in Print against me concerning *Amicia*, yet he might now appear against me in Print by a scandalous Admonition.

Pag. 19. of his Admonition.

Here he faith in the same Page, that since that time (that is, since he appeared Publickly in Print against me : he might have done well to have excepted this Admonition) I have put out at once no less than three Books concerning the same Subject, that is, concerning the Bastardy of *Amicia*.

Answer.

[Page 36.] Now these three Books are but one Book digested into three parts, and printed all at one time, which he so formally calls a second Reply, *Peroratio ad Lectorem*, and the case of *Amicia* truly stated, for the nature of the things required there to be handled apart, which (faith he) ³⁶was certainly a great deal of lost labour, if my former Books had made the case so clear, as I all along pretended they did.

But not so neither, for though the case might be clear enough before, yet I believe it is now made more clear, by removing those mists which Sir *Thomas* had endeavoured to cast upon the Truth.

Pag. 20. of his Admonition.

Here Sir *Thomas* faith, that in all the Books I have written upon this occasion, the same things are said over and over again, as he believes the like cannot be found elsewhere ; so that it would be pleasant if some Person who hath little else to do, would take an account how many times I have repeated the same things.

Answer.

Whereunto I say, that the like ³⁷ may be found even in his own Books, whosoever will take pains to read them over; and what if the same things be sometimes repeated? these must needs fall as oft as occasion is offered.

[Page 37.]

But now in the same twentieth Page he saith, — Though he intends speedily to write an Answer to that part of the Record which is mentioned in the 76 and 77 Pages of my *Peroratio*, yet he doth not design it at present for the publick Press, but he will shew both it, and his answser to my former Advertisement, unto all knowing Persons who desire to see the same, and he doth not doubt but to give them full satisfaction of my mistakes concerning both those Records, that they do not prove those things which I conceit they do.

Surely I can have no mistake concerning them, if the Record be truly writ by me, which my Friend hath twice examined, nor do I conceit they prove any thing but what ³⁸is plain to every rational Man; and it appears by other proof, that *Robert Earl of Gloucester* was not above ten Years old when he was married, and those can be no very knowing Persons who shall be so captivated in their reason by him as to receive full satisfaction concerning my mistakes therein.

[Page 38.]

For if Sir *Thomas* shall not aver against a Record (as sometime he hath done against an original Deed) his cavils cannot smother the truth, nor defend what he here saith when it shall come publickly to be scanned.

Pag. 21. of his Admonition.

Speaking here of his Letter mentioned by me in my *Peroratio ad Lettorem*, he saith it is possible he might write to a Kinsman of his and mine, that Mr. *Dugdale* had delivered his opinion in Print on his side, as also what he had received from a very good

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hand concerning several of ³⁹our Judges, but he knows nothing of his Letter being left with *Throp* the Stationer in *Chester*, and he is sure he did not write that Mr. *Dugdale* moved the Judges in the case, for he was not then in *London* when that Meeting was, nor knew of it till that Meeting was past, and it was occasioned by my Appeal to them.

Answer.

[Page 40.]

Do but see now his equivocation. It is possible he might write that Mr. *Dugdale* hath delivered his opinion in Print: why doth he not speak downright, and say, that he did so write concerning Mr. *Dugdale*'s opinion? when it is most certain that he did so write to that Kinsman, and several others, and though he says he knows nothing of the Letter being left with *Throp* the Stationer, yet it is most certain that *Throp* had it, and shewed it to others; why doth he not say ⁴⁰what it is that he had received from that very good hand concerning the Judges? and then he saith, the meeting of the Judges was occasioned by my Appeal to them: I'le swear, that neither I, nor any from me, by my knowledg or procurement, did move any of them to that Meeting: and on the other hand, I believe they would not have had any such Meeting if no Body had moved them to it; and I would fain know what question was moved to them, and by whom.

Pag. 22. of his Admonition.

Here he saith, that the question (as I alledge) whether Bastard or no Bastard hath nothing of any Law in the case, and that it is more proper for the Judges to judg only upon the point of Law: Now (saith he) how they can judg of the point of Law if there be nothing of any Law in the case, may perhaps be very difficult for any but Sir *Peter* to tell.

⁴¹ *Answer.*

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Thus the Reader may see his old way of catching at words, though he knows my meaning well enough: I do still affirm, that whether *Amicia* be a Bastard or no, hath nothing properly of any Law in the case, but it is meerly a question of History, and cannot be proved but by History, Records and Reason; and because our reverend Judges have not leasure to search up all the Histories and Records touching the same, it is not fit to be put to them for their opinions, unless also all the Records and Histories, together with all the reasons alledged on both sides were produced before them: But because Sir *Thomas* and others would prove it by a point of Law (though very improperly) formerly discussed between us in our Books, and which I alledge will not reach the present case, nor hath he any probable argument ⁴²out of any History, Record, or Evidence to prove her legitimate: I say it is more proper for the Judges to judge on that point of Law in difference between us, than whether *Amicia* be a Bastard or no, or whether *Hugh Cyvelioc* had a former Wife or no, which hath no Law in the case.

[Page 42.]

Pag. 23. of his Admonition.

Here lastly he tells us, he expects I will write several Books against what he hath here published about my mistakes concerning his Family, which if I do, he will not go about publickly to answer any of them; but if any one will come to him, he will shew proof of all the Uncertainties, Omissions, and Mistakes which he hath charged me withall.

Answer.

Whereunto I say that I shall ⁴³write no more concerning this Admonition than this Answere here published, unles he shall also publish more scandalous things against me.

[Page 43.]

Only I observe he will not, or rather cannot shew any proofs for my partiality, for that is left out here among the other general Heads mentioned, and it had been better to have left that out before, for I dare appeal to God and his own Conscience, that he verily believes that I intended nothing of partiality to any Family, nor especially any malignancy to his, and therefore more unhandsomly done to charge it upon me before, and most unjust.

[Page 44.] And what he saith of showing proofs of all the Uncertainties, Omissions, and Mistakes here charged upon me unto any one that shall come unto him, I believe he will have very few to resort unto him [“]on that account only, unless they were more weighty: and concerning which, I refer my self to my Answer here above written.

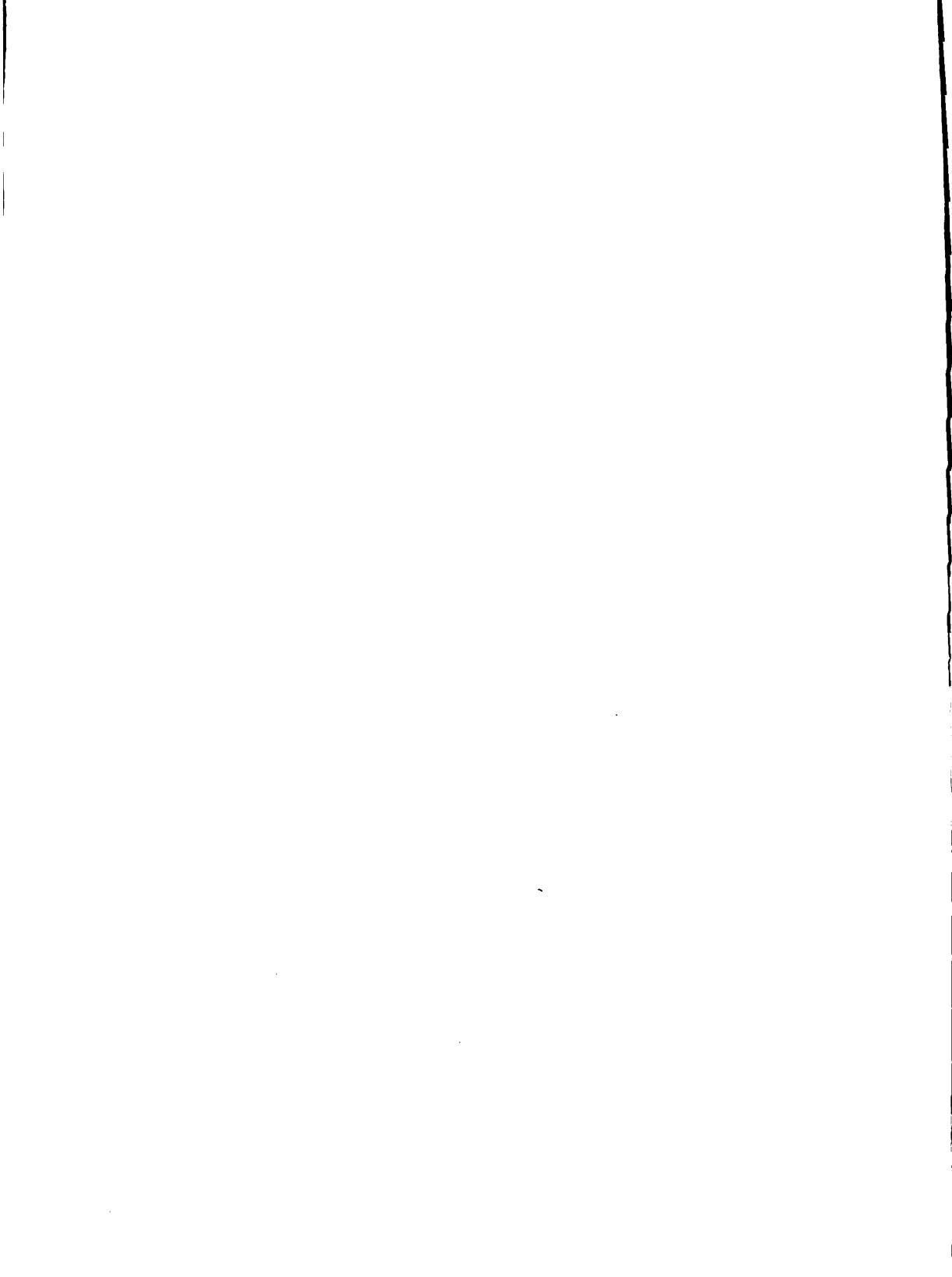
Mobberley, Sept.
the 20. 1676.

F I N I S.

A REPLY
TO
Sir Peter Leicester's
Answer to
Sir Thomas Mainwaring's
Admonition to the
READER of
S: Peter Leicester's Books.

Written
by the sayd
Sir Thomas Mainwaring.

But never yet Printed.



*'A Reply to Sir Peter Leicester's
Answer, &c:*

[Page 1.]



Ir Peter Leicester in his *Answer* to my Booke, entituled *An Admonition to the Reader of Sir Peter Leicester's Books*, would willingly clear himself from that partiality, and those omissions, uncertainties, and mistakes, which I there charge him with;

But he is not able to free himself from them or any of them, as will hereafter appear,

ffor, As to the ffirst; Though ²he pretends he was impartial in calling *Odard* (who is mentioned in *Domesday Book*) the undoubted Auncestor of the *Duttons*, whereas he called *Ranulphus* (who is also mentioned in the said *Domesday Book*) but the supposed Auncestor of the *Mainwarings*, for some reasons which he pretends to give in his said Answer to my Admonition, yet I think they are such as will make his partiality in this particular to appear more clearly then it did before;

[Page 2.]

For, whereas he tells us of ³a Record in the 117. Page of his Great Book, *sub anno. 1119.* in which are these words, *Willielmus Constabularius dedit Newtonam simul cum servitio Hugonis filij Vdardi de quatuor Bovatis*; And whereas he also supposeth this *Hugh Sonne of Hodard* to be *Hugh Dutton Sonne of Hodard Dutton*, both in the 250. and 264. pages of his said Book, and cites the said Record and the said two pages of his said Book, in the 3. page of his Answer to my Admonition in such a manner ⁴as an unwary Reader may easily take them for three severall

[Page 3.]

[Page 4.]

proofes, whereas it is but one single Record, So on the other hand the said Record is not such an undoubted Proofe, as he supposeth it to be ; ffor, as he sayes, it is not absolutely certain that *Richard Mesnilwaren* or *Mainwaring* who succeeded the said *Ranulphus*, was son of the said *Randle*, because we do not find the expresse words *Richard Mesnilwarin* son of *Ranulphus*,

[Page 5.]

so ⁵I doubt not but the judicious Reader will easily observe, that the aforesaid Record doth not say *cum servitio* *Hugonis Dutton filij Vdardi*, nor *cum servitio* *Hugonis filij Vdardi Dutton*, but *cum servitio* *Hugonis filij Vdardi*, So that it is possible that the aforesaid *Hugh Son of Hodard*, might be an *Hugh* that was Son to another *Hodard*, and not Son to that *Hodard* who held some part of *Dutton* and was mentioned in *Domesday-Book* ; And whereas he calls him whom he placeth as the Third

[Page 6.]

Dutton of Dutton thus, *viz.* ⁶*Hugh de Dutton son of Hugh son of Hodard*, he must give mee leave to believe he cannot shew mee any Deed or Record of that age, which doth mention that *Hugh de Dutton*, to be *Hugh son of Hugh son of Hodard*, as *Sir Peter* there doth, And if he cannot bring any such prooфе, it is possible that the said *Hugh de Dutton* (the Third person which he there mentions) might be owner of those Lands which *Odard* held in the Conqueror's time, either as heir to him by an heir female, ⁷or else heir by purchase, and yet call himself *Hugh de Dutton* from the place where he lived, it being as *Sir Peter* hath often confessed, very usuall for persons in those ages so to do.

[Page 7.]

Yea, but sayes Sir Peter, *the antient Roll of the Barons of Halton, which I have seen and transcribed in one of my Manuscripts, noted Lib. C. 84. 85. (which Roll seemed to be written in a Character of 300. years standing at the least) sayth that ab ipso Hudardo venerunt omnes Duttonienses. See also Monasticon Angli-⁸canum, vol. 2. page 187. and also page 249. of my Book, but I never knew or heard of any such ancient Roll or Record, wherein it is sayd ab ipso Ranulpho venerunt omnes Manwaringi.*

[Page 8.]

To which I answer, First, that the said Roll mentioned in *Sir Peter's* said Manuscript, and that in the 187. page of the said 2

Volume of the said Monasticon, and that which he speaks of in the 249. page of his said Book, are but one and the same thing, ⁹unless there be some small circumstantiall differences in them, occasioned by the often transcribing or negligences of some Clarks who did write the same, and yet they are here so expressed by *Sir Peter* that an incautelous Reader may through inadvertency take them to be three severall Prooves.

[Page 9.]

Secondly, *Sir Peter* in his 4th page of his Answver to my Admonition sayes he never knew nor heard of any such ancient ¹⁰Roll or *Record, wherein it is sayd, *ab ipso Ranulpho* ^{* Note.} *venerunt omnes Manwaringi*; By which expression those Readers who are not intelligent, may perhaps take that for a Record, in which it is sayd, *ab ipso Hudardo venerunt omnes Duttonienses*; Whereas it is only a thing written by some private unknown person, and hath several apparent falsities therein, as will herein hereafter appear.

[Page 10.]

Thirdly, Whereas that Roll ¹¹sayes, *Ab ipso Hudardo venerunt omnes Duttonienses*, that may be very true, and yet for all that it is possible, that *Hugh de Dutton* (the Third person mentioned by *Sir Peter* in the Pedegree of the *Duttons*) might descend of an heir female of the said *Hudard*, and he and all his posterity take the name of *Dutton* from the name of the place where they lived, which was very usuall in those elder times, as hath been obserued before by me, and as *Sir Peter* ¹²doth acknowledg in many places in his *Historical Antiquities*, and elsewhere.

[Page 11.]

Fourthly, *Sir Peter* says, that the said Roll which he transcribed as aforesaid, seemed to be written in a Character of 300. years standing at the least, by which an unskilfull Reader may perhaps thinke that the Roll it selfe was much elder, and that the Roll which *Sir Peter* saw, might be but a Copie, whereas the ¹³Original it self was not made before the Twenty Second year of King *Edward* the Third, being the year 1348. as you may see in *Monasticon Anglicanum*, vol. 2. page 190. The said Roll ending thus, *Et sic hereditas Dominorum de Lacy in Comitatu Eboracensi, Lincolnensi, Lancastriensi, et Cestrensi, et in pluribus alijs*

[Page 12.]

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[Page 14.] *locis Regni a nomine, posteritate dominorum de Lacy, usque ad hæredes Edmundi Comitis Lancastriæ prædicti, est finaliter jam trans-¹⁴ lata, tempore videlicet Edwardi Regis tertij post conquestum, et anno regni sui vicefimo secundo.* Now how a Roll written by an unknown person in the 22th year of King *Edward* the Third (who was the Eleventh King of England after the Conquest) can be an undoubted Prooofe of those persons who lived in or near to the time of the Conquest, let any indifferent and learned person judge, and especially when it doth not ¹⁵ name any one man, who was the posterity of the said *Odard*.

[Page 15.] Fifthly, The said Roll doth apparently shew itself to be of no credit at all; ffor as you may see in *Monaſt. Angl.* vol. 2. p. 187, 188. it says, that *William Constable of Cheshire* son of *William*, and the Third Baron of *Halton*, dyed without issue, and left two Sisters to be his Co-heirs, to wit *Agnes & Matilda*, and it sayes that a Knight whose name was *Eustace* marryed the ¹⁶sayd *Matilda*, and had issue by her a Son named *Richard*, and that *Aubertus Grely* marryed the said *Agnes*; The words of the said Roll are these, *Et iſte Willielmus filius Nigelli fundator diclæ domus, obiit et sepultus est apud Cestriam. Cui in hæreditate succedit filius ejus Willielmus junior, qui prædictis Canonicis dedit in excambium alias terras pro terra sua de Runcorne, et alijs terris suis; scilicet ad Northonam villam transferendo Prioratum antedictum. Et iſte Wil-¹⁷ lielmus obiit in Normannia, unde venerat avus suus, et non reliquit hæredem de corpore suo, sed habuit duas sorores, scilicet Agnetem et Matildem, inter quas divisa fuit hæreditatis honoris de Haulton. Matildem despousavit quidam Miles Eustachius nomine, qui fuit postea imperfectus in Wallia. Et Aubertus Grely duxit diclam Agnetem uxorem.*

[Page 16.] *Eustachius verò prædictus antequam interficeretur, cum dicta Matilda habuit filium qui vocabatur Ricardus. Et iſte ¹⁸ Ricardus duxit sororem Roberti de Lacy, quæ vocabatur Aubrey Lyfours, de qua genuit duos filios, scilicet Iohannem Conſtabularium, Fundatorem domus de Stanlowe, &c. Whereas Sir Peter Leicester in his Histor. Antiquities, pag. 266. tells you that the*

said *Agnes* (not the said *Matilda*) was second wife of *Eustace Fitz-John*, and that *Richard* (afterward Constable of *Cheshire*) was their eldest son, and for that he quotes the said 2^d Volume of *Monasti-¹⁹con Anglicanum*, pag. 798. 799. wherein you may find two Deeds verbatim set downe amongst others, in the first of which the said *Eustace* calls *Agnes* his wife, and in the second (which is there sayd to be in the Custody of *Sir William Constable of Flamburgh in Yorkshire Baronet*) the said *Agnes* calls herself daughter of *William Constable of Cheshire*, and there also speaks of *Eustace* her husband, and *Richard* her son; But *Sir Peter Leicester* takes no notice of this great ²⁰mistake in that Roll, ffor if he had, the mistake being so grosse, it would have taken away the credit of that Roll, and then there would have been an end of the Argument brought from *ab ipso Hudardo venerunt omnes Duttonienses*;

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But here is another great mistake in the said Roll, and that *Sir Peter* himself in the 269. page of his *Historical Antiquities*, doth take notice of, ffor he observes that it is sayd in the said Roll, that *Maude de²¹ Clare* wife of *Roger Lacy* was Sister of the Treasurer of *Yorke Minster*, Whereas *Sir Peter* there tells you, *Bevoys de Clare Treasurer of York Minster had noe sister called Maude; for all the sisters are punctually reckoned up in the Booke of Tewksbery, as you may find them copied out by Vincent in his Corrections of Brook's Catalogue of Nobility*, page 221. whereby it appears plainly, that those sisters also were all born after the death of *Roger Lacy*; See therefore what Prooves *Sir²² Peter* doth here bring for undoubted ones, as also how impartially he deals in the 5. page of his *Answer to my Admonition* in that expression, viz. *as is certainly recorded of the Duttons from Odard*, Whereas there is no certainty of what is there sayd; Neither is that Roll any Record at all;

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[Page 22.]

And as to that Argument from *Hudard's Sword*, as I find not any thing recorded wth *Hudard* did, to make his Sword ²³to be preserved more than the Swords of other Gentlemen of that age, So on the other hand, I give not much credit to these kind

[Page 23.]

of Traditions, ffor, I know but of two concerning my owne ffamily, and can prove them both to be certainly false ; And if *Sir Peter* will create in me ffaith (equally strong with his) to believe that to be *Hudard's* Sword, he must shew me some mention thereof in some Deed, Will, Paper, Parchment, Roll, or Record,

[Page 24.] made within some reasonable time ²⁴after the said *Hudards* death, & not in any Parchm^t or Paper made fev'all hundreds of years aft' his Decease. I shall therefore appeal to the indifferent Reader, whether there be not as great a certainty that *Ranulphus* was the Auncesto^r of the *Mainwarings*, as there is that *Hudard* was the Auncesto^r of the *Duttons* ; ffor the Sirname of *Mainwaring* was a fixed name, whereas that of *Dutton* was taken from that place, and the Sirname of *Mefnilwaren* or *Mainwaring*

[Page 25.] ²⁵as you may see in the One Hundred and Eleventh page of *Sir Peter's* Great Book, was used by *Richard Mefnilwaren*, which (except the said *Ranulphus*) is the ffirst *Mainwaring* that we do find, Whereas *Sir Peter* first addes the Sirname of *Dutton* to

[Page 26.] *Hugh* Son of *Hugh* who was the Third of that ffamily, And in the Table hanged up att *Battaile* Abbey, printed with *Ordericus Vitalis*, and in *Hollinshead* and *Stow*, and others ²⁶the ffamily of *Mainwaring* is named as one of those which came in with *William* the Conquerour, which that of *Dutton* is not ; And as the lands wth *Odard* held in *Dutton*, *Aston*, *Weflon*, and *Halton* came to the *Duttons*, So the lands of the said *Ranulphus* in *Blaken*, *Wenitone*, *Tatton*, *Pever*, *Warford*, *Little-Pever*, *Cepmundcwich*, *Ollerton*, *Senelestune*, *Cocheshalle*, *Hoiloch*, *Tadetune* (which is the same with *Warmincham*) *Norwardine*, *Sundreland*, and *Baggeley* in *Cheshire*, ²⁷and the Lordship of *Waburne* in

[Page 27.] *Norfolk* were certainly enjoied by the *Mainwarings*, And as all the lands which the said *Ranulphus* had were enjoied by the *Mainwaring's*, so for some generations after the Conquest we find very little land which the *Mainwaring*s had besides those of *Ranulphus*, So that *Sir Peter* instead of supposing *Ranulphus* to be the Auncesto^r of the *Mainwarings*, (if he did not wilfully shut his ²⁸eyes) might be as certain of that, as he is that *Hodard* was the Auncesto^r of the *Duttons*.

To the Second.

He will not yet acknowledg that there were Seven *Hamlets* in *Peover*, and says *Radbrock* and the other fflour there mentioned by me are not called *Hamlets* as *Cepmundewich* and *Fodon* were, and he also says that *Hamlets are as it were a Ville within a Ville, and are places more ²⁹conspicuous and usually containing a greater quantity of land then a private place field or tenement gaining certain names, &c:* In Answere whereunto, I shal first observe the strange boldnes of *Sir Peter*, who having seen *Cepmondwich* and *Fodon* called *Hamlets* in a Deed in a private ffreeholders hand, dated 7. *Edw.* 3. upon which a ffine was levyed in the same year, will thereupon positivly say (though he ³⁰know nothing thereof) that nether *Radbrock* nor the other fflour were called *Hamlets*, as *Cepmondwich* and *Fodon* were, whereas the contrary thereof doth plainly appear by several of my Deeds, so that I suppose the Reader will not give much credit to what *Sir Peter* doth say.

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And *Twyford* which is one of the ffive *Hamlets* omitted by *Sir Peter*, is called the *Mannor* of *Twyford* in *Over Peover*, the like whereof (I believe) cannot be found of either the aforesaid ³¹*Cepmonswich or Fodon*; And whereas he also sayes *an Hamlet usually containes a greater quantity of land then a private place field or tenement*, he well knows that many *Hamlets* do consist of single Tenements, and amongst the rest *Fodon* it self so doth, *Iohn Beard* being Owner (as *Sir Peter* calls it) of one half of that Mefuage called *Fodon*, and my Tenant *Mr. Richard Acton* being in possession of the other half of *Fodon* aforesaid.

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But *Sir Henry Spelman* in his *Glossary* printed 1664. page 274. ³²will tell you what an *Hamlet* is, who writes thus, *Hamel, Hamleta, Hampfell,*] *Diminutiva ab Ham pro villa: sed voces prima et ultima, rarius occurunt.* Let autem (al. lit.) (*ut me docuit in Hermathena Goropius*) membrum significat: *sic ut Hamleta propriè pars et membrum sit alterius villæ, potius quam per se existens villula.* And afterwards in the same page he sayes

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that an Hamlet is that *quaæ medietatem friborgi non obtinuit*:

[Page 33.] ³³*hoc est, ubi quinque Capitales plegij non deprehensi sunt.* And I doubt not but to satisfie any indifferent person that the other places are Hamlets aswell as *Cepmundewich* and *Fodon*, and that the most of them are larger then *Fodon* is, (All *Foden* being hardly of the value of 40^l p annū) And certainly *Cepmundewich* and *Fodon* were Hamlets before *Thomas de Cepmondewich* so called them in his Deed afore-³⁴said, and would have been so, if he had not then given them that term, so that many places may be and are *Hamlets*, w^{ch} were never expressly so named in any Deeds.

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To the Third.

Wherein I charge him with his omitting in the Pedigree of the *Mainwaring's* (page 331.) *Ranulphus*, mençoned in *Domesday-book*, *Richard Mesnilwarin*, *Roger de Mesnilgarin*, and *William*

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and *Randle* his Sonnes, ³⁵*Roger de Menilgarin*, *Sir Ralph Mainwaring*, and *Sir Roger* his Son ; He answers (but very strangely) *that if I had veiwed wel, page 330. of his Book, I might have found the last Roger Mainwaring and Raph Mainwaring his father, sometime Iudg of Chester to haue been mentioned there, but that either of them were knights it doth not certainly appeare to him* ; Whereas in the 7. Page of my *Admonition* I did observe,

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that ³⁶in his said 330. page, he did occasionally take notice of the said *Sir Ralph* and *Sir Roger*, as also shewed how in other pages of his said Book he had mentioned all the rest, which he had omitted in the said Pedigree, and did thereupon (as a further aggravation) tax him for leaving all them out in the said Pedigree, which Pedigree he did begin in the following Page ; And though he fayes it doth not *certainly* appeare to him, ³⁷*that either the said last Roger or his father Ralph were knights, yet his own Conscience cannot but tell him that they were knights, and he hath long since in print owned them both so to be, and I shall satisfie any person that comes to me that they were most certainly*

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knights, And I doubt not (though he fayes he cannot do it) but I can and haue put those *Mainwarings* which he omitted, into right order, as they ought to ³⁸be, and that with as certaine proofoes, as he doth that ffamily, of which he would not have any doubt to be made ; However I cannot but againe wonder at his strange boldnes in the 8. and 9. pages of his *Answer* to my *Admonition*, wherein he fayes, *that though they* (meaning the *Mainwarings* of *Peover* and *Warmincham*) *were Lords of Over-Peover, or the greatest part thereof, that yet certainly none of them lived at* ³⁹*Over-Peover til the time of King Henry the Third,* which is impossible for him to know ; And why the *Mainwarings* of *Warmincham* might not then aswel live at *Peover*, if *Warmincham* was their chief Seat, as my ffather and I lived a long time at *Baddeley*, though *Peover* was our principall Seat, or why *Peover* might not be the principall Seat of the *Mainwarings*, though given by *Sir Roger Mainwaring* to his younger Son *Sir* ²⁰*William Mainwaring*, aswell as *Sir Egerton* in this age did give *Egerton* his principall Seat to his younger Son *Sir Philip Egerton*, will be hard, (notwithstanding *Sir Peter's* *certainly* to the contrary) for any man to tell ; And whereas in his 10th page, (being always excellent at proving Negatives) he says *it is certain that William Mainwaring* (meaning him to whom his father *Sir Roger Mainwaring* ⁴¹*gave Peover in Henry the Third's time*) *was no Knight*, and for that end takes notice of a Deed (ffor I haue reason to believe he hath seen but one such, notwithstanding his many Quotations) wherein *Sir William Mainwaring Parson of Wernith* was subscribed as a witnesse, and thereupon concludes, *if you find any William subscribed Domino Gulielmo Mainwaring in that age, that is to be understood* ⁴²*of William the Parson* ; Herein he fightes with his own shadow, fför *Sir William Mainwaring* is not subscribed *Domino Gulielmo Mainwaring*, or as a witnes to that Deed which proves him to be a Knight, but that Deed concerns Lands in an Hamlett in *Peover*, then passed away, whereby a rent was reserved to the said *Sir William* and his heirs, and there is another *William Mainwaring* witnes to the said

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- [Page 43.] Deed, ⁴³and this will shew that *Sir John Mainwaring* who lived in the time of *Henry the Sixth*, was not the first Knight of the ffamily of the *Mainwarings* of *Over-Peover*, in *Sir Peter's* owne fence, But all other persons will readily allow those *Mainwarings* who were owners both of *Warmincham* and *Over-Peover* and were Knights, to be of the ffamily of the *Mainwarings* of *Peover*; and *Sir Peter* cannot deny but that I am their heir
- [Page 44.] ⁴⁴male, and that all the *Mainwarings* who were owners of *Warmincham* were owners of *Peover* also, except *Sir Thomas Mainwaring* and *Sir Warine Mainwaring*, who were the two last, *Warmincham* going away to *Sir William Trussel* of *Cubleodon* the younger with the said *Sir Warine's* daughter and Heir.

To the Fourth.

- [Page 45.] He doth confess that he may be mistaken therein, (see, how unwilling he is to acknowledg it ⁴⁵absolutly) and sayes, by long pausing on my own Deeds, I might the better discover it, But it is better to pawse awhile, then to make too much hast, for *Canis festinans cæcos parit catulos*; And sure, a little pawsing might serve to discover that *Hugh Holt* who was husband of *Margery Praers* in the 33. year of *Edw. 3.* was her husband before *John Honford* was, who was her husband in 46. 47. and 50. *Edw. 3.*

⁴⁶To the Fifth.

- [Page 47.] He says, *William Leigh of Baggiley was no Knight* 33. *Edw. 3.* when he married *Ioane Mainwaring* for he was then very young and under age, and therefore no error, &c: Howbeit he was afterwards a Knight, which he took notice of in due place; But I say that his knowing that he was a Knight, and not calling him soe in my Pedigree, adds to the ffault, and he must call but very few ⁴⁷persons Knights, in Pedigrees, if he will call none so, but such as were Knights before the time that they were married.

To the Sixth.

He says, *that he that tricked out that seale for him* (meaning that which was *two bars with a Lyon passant guardant on a Chiefe*) *saw afwell as himselfe, that the seale was Three Barres, and not Two Barres, to the best of their judgments*; But I believe the person that tricked out the ⁴⁸seale did trick it out right, ffor it is cutt right, with Two Barres in *Sir Peter's Great Book*; So that the only fault (I doubt) was, that *Sir Peter* could not Blazon that Coat aright; And he yet will not amend his other Error, but still in his *Answer* to my *Admonition* to the Reader calls it a Lyon in Chiefe, instead of a Lyon on a Chiefe.

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To the Seventh.

He says, *he must needs omitt* ⁴⁹*Iohn and Margery, brother and sister to the said Helen, which he then knew nothing of &c: and it was not his designe to collect all the Children of the younger Sons*; But with his leave, I had informed him of the said *Iohn* and *Margery*, and by the same reason that he named *Hellen*, he should haue named the said *Margery* and *Iohn*, they being brother and sister to the said *Hellen*.

[Page 49.]

To the Eighth.

He says, *that he but gueffed at* ⁵⁰*the death of William (sonne of Roger Mainwaring) without any exact certainty, when he sayd he dyed about 12. or 13. of Edw. 3.* and therefore says, *that it is a very poor exception*; But the Exception is no poor one, because I had informed him, that the said *William* was living, and party to a Deed made on the Eve of St John Baptist 14. Edw. 3. which Deed he also quotes in the Second line of his 332. page, being the same page ⁵¹in which he sayd, the said *William* dyed about 12. or 13. of *Edw. 3.*

[Page 50.]

[Page 51.]

To the Nynth.

[Page 52.]

Whereas I had taxed him with saying that *William Mainwaring* son of *William Mainwaring* and *Ioane Praers* did divide the lands of *Baddeley* between *Iohn Mainwaring* his half brother, and *Iohn Honford*; Whereas he had formerly given severall Thousand Acres of Land which came by his Mother, and of which ⁵²the Demesne of *Baddeley* was part, solely to his said Brother *Iohn*, and only divided the remainder of the said lands; To this, *Sir Peter* answers, *Why then he divided the lands of Baddeley*; And I yet say, he then divided but part of the lands of *Baddeley*.

To the Tenth.

[Page 53.]

[Page 54.]

Whereas he sayd, that *William Mainwaring's seale had the impression of his Coat and Crest, to wit, in an Escocheon, two bars* ⁵³*only, and cornerways on the Dexter Angle, on an Helmet, an Asse-head cooped, &c:* which he sayd, *his heirs have ever since continued, to wit, Argent, two Barres gules, The Crest An Asse head cooped proper*; His Answer is, (because I shew they have given the Asse head severall other ways) that *I make here no certain Crest to my Family*, and calls it a very worthy Exception, But with his leave, it shews his Mistake, and it is ⁵⁴no wonder, that Crests were not then settled, many persons having since then altered their Crests, and *Sir Peter's ffamily hath* since that time given two distinct Crests, as may be seen in the 21. page of my *Reply to his Answer to the Defence of Amicia*, And I am sure those two Crests of the *Leicester's of Tabley* did differ much more than those of ours, which I haue mentioned.

[Page 55.]

⁵⁵To the Eleventh.

Whereas I had taken notice how *Sir Peter* had sayd, that *William Mainwaring the husband of Katherine Belgrave and Clementia Cotton settled his estate upon his departure out of Eng-*

land towards Guien 17. Ric. 2. 1393. and afterwards made his Will 1394. whereas the said Settlement made 17. Ric. 2. was also a Will, and was but of part of that Estate which he ⁵⁶had by his Mother, Sir Peter to this says, *that he neither sayd he settled the lands of the one nor the other, but only that he settled his estate, which if it were ether of his Mothers lands or Fathers lands, he sayd truth:* But to this I say, that any ingenious indifferent man will easily discerne the difference betwixt the estate of the said William, and only part of those lands ⁵⁷which he had from his Mother by descent. [Page 56.] [Page 57.]

To the Twelfth.

Sir Peter says, that *probably the marriage of Iohn Mainwaring with Sir Iohn Waren's widow was about the 13th of H. 4.* Which is a thing I never denyed; But that w^{ch} I observed was, that Sir Peter in the 333. Page of his Great Book sayd, *they were marryed about 13th Ric. 2. For, Sir Iohn 58 Warren dyed the 10th of Ric. 2.* [Page 58.] And I thereupon sayd, that I did not understand how Sir John Warren dying in the Tenth of Ric. 2. did prove, that Iohn Mainwaring marryed his widow, about 13th Ric: 2: But it seems Sir Peter doth not yet perceive to what he ought to answere in this place.

To the Thirteenth.

He says, my Exception that ⁵⁹*he omitted Iohn Mainwaring's being Sherriffe of Cheshire 7. H. 4. was a Childish one, as most of the other be;* But with his leave I having inform'd him thereof, he ought to haue observed it, aswell as he did that he was Sheriff there in the 4. 5. and 6. of H. 4. [Page 59.]

To the Fourteenth.

When I charge him with saying positivly that Iohn Mainwaring *dyed 11. of H. 4. 1410.* whereas he was certainly dead [Page 60.]

[Page 61.] in the year 1409. he says *it is a pittifull exception*, and asketh *why I do not produce authority for the exact time of his death*; But as pittifull as he makes it, *Vincent* in his Corrections upon *Brooke*, and all others in the like Case, make such Exceptions, and the time of his death plainly appears to be 1409. by a Precept to the ⁶¹*Sheriffe of Cheshire* to enquire what lands he dyed seised of, dated at *Chester* the 13th of March in that very year; And if a Writer will take upon him to tell the time of a mans death, he ought to tell the true year.

To the Fifteenth.

[Page 62.] He acknowledgeth that to be a mistake, but says *he hath rectified it in print long since, at the end of his said Booke* ⁶²*among the Errata, and also at the end of his Answer to the Defence of Amicia, so soon as he knew the certainty of it, and therefore ought not to be charged upon him*; But to this I answer, that my work being at that time to observe what Mistakes he made in those two Sheets, and this being one of those, and not amended by him till I told him of it in print, it ought to be mentioned by me here; And he ⁶³runs into another Error, by saying he rectified it, so soon as he knew the certainty of it, ffor I had told him of it, before he printed his Great Book.

To the Sixteenth.

[Page 64.] Wherein he had sayd that *Sir John Mainwaring of Over Peover dyed about the very end of Edw. the 4th his reign*, whereas the said King dyed in the 23th year of his Reign, and the said *Sir John* was certainly dead on the ⁶⁴14th of *Aprrill*, which was neare the beginning of the 20th year of the said King; He doth implicitly acknowledg his Mistake, ffor he fayes, *Had he but sayd towards the later end of Edw. 4. he had not much erred, and he could not put down the exact time till he knew it: Now Edw. 4. raigned but 22. years in all*; But I say I did acquaint him with this Mistake,

And he here runs into another little one, ⁶⁵ffor *Edw. 4.* dyed in the 23th year of his reign, and therefore reigned something more then 22. years in all.

[Page 65.]

To the Seventeenth.

He also acknowledgeth that to be a Mistake, and though he did amend it at the last, yet for the same Reason which I gave to the 15th it ought to be mentioned here ; But whereas he says, *so soon as he found out the truth, he rectified that* ⁶⁶*omission in print* ; That is not so, ffor I had before then informed him of it, as you may see page 78. at the end of my *Defence of Amicia*. And to put down *Maude* daughter of *Sir John Savage* instead of *Agnes Mainwaring* was more then an Omission, though he be loath to confess the same.

[Page 66.]

To the Eighteenth.

Whereas I had shewed him that probably *William Newton* was not marryed to *Katherine* ⁶⁷daughter of *Sir John Mainwaring* untill the year 1522. although he had positivly sayd that they were marryed in 1521. and thereupon I charged him with writing an Uncertainty as a positive Truth ; He answers, *That it is as probable they were marryed 1521. as 1522. and can absolute certainty be always found out in matters of this nature in every particular? Therefore let it stand till it be* ⁶⁸*proved to be an Error* ; But this doth not clear *Sir Peter* from what he stands charged with, ffor (as I proved in my *Admonition*) the Deeds concerning the Lands which the said *Katherine* was to haue in Ioynture (at the making of which Deeds she was certainly unmarryed) were dated the one the ffirst, the other the Second of *March* in the 13th of *Hen. 8.* which was in the year 1521. according to the Accompt ⁶⁹of the Church of *England*, but in the year 1522. according to the *Iulian Accompt*. Now the *Dominicall-Letter* being that year *E.* and the *Golden-Number* 3. the Second of

[Page 67.]

[Page 68.]

[Page 69.]

March would be *Shrove-Sunday*, and the Twentieth of *Aprill* would be *Easter-Day*, and *Lent* being a time not usuall for Marriages, and especially in those times of Popery, it is more then probable the said Marriage was not till ⁷⁰after *Easter* day, And if so, it was not untill the year 1522. However, he doth not clear himself from writing an uncertainty as a certainty, which is all that he there stands charged with.

To the Nineteenth.

Whereas he sayd, *that Sir Iohn Mainwaring was Sherriffe of Flint-shire*, 6. Hen. 8. but took noe notice that he was Sherriffe there 23. and 24. Hen. 7. and also 1. and 2. Hen. 8. He answers, [Page 71.] *It ⁷¹is true what he hath sayd, and well enough without it, &c: and shall his credit be impeached, &c: because he cannot know every thing?* But for all this, He having formerly bene informed of these things, is justly charged with an Omission herein.

To the Twentyeth.

Speaking of the time of *Sir Iohn Mainwaring's* death, he says, *It perhaps were better placed to be Anno 1516. or 1517. let him find ⁷²out the absolute time, and I will mend it,* But he is not blamed for saying *Sir Iohn Mainwaring dyed*, 1515. for his Monument says he dyed in that year, but for saying he dyed 8. Hen. 8. 1515. whereas no part of the 8th year of King *Henry 8th* was in any part of that year; The 8th year of King *Henry 8th* not beginning till the 22th of *Aprill* 1516. So that it seemes *Sir Peter* did not understand ⁷³what he here stood charged withall.

To the One & Twentyeth.

Whereas he was charged with saying positivly, *that Sir Randle Mainwaring after the death of his first wife, married Elizabeth daughter of Sir Ralph Leicester of Toft*, 6. Edw. 6. 1551. whereas

it cannot be proved that they were marryed till the year 1552. he answers, *therefore let it stand donec probetur contrarium, it may be so for ought he knows*; Wherein (to say nothing of the strangenesse of the Rule he there gives) he doth acknowledg what he sayd to be *uncertain*, and that is all which he was there charged with.

[Page 74.]

To the Two & Twentyeth.

Whereas he sayd Philip Mainwaring Esq^r *was the Fifth son of Sir Iohn Mainwaring*, when indeed he was the Seventh Son borne, *Sir Peter answers, it may be so, but they all dyed young, and Philip became heir: If it be an Error, it is but a small one, and not materiall*: In which Answer of his, as he doth acknowledg his Error, but with an *if*, soe he also runs into two new Errors, in saying that they all dyed young, and *Philip* became heir; ffor, *Sir Randle*, the elder brother of the said *Philip* lived to a considerable age, being first marryed to *Elizabeth* the daughter of *Sir Randle Brereton of Malpas*, and ⁷⁶*widow of Richard Cholmondeley of Cholmondeley in Cheshire Esq^r* in or before the year 1518. by whom he had three daughters who were marryed in the life time of the said *Sir Randle Mainwaring* and the said *Elizabeth* his first wife, And afterwards the said *Sir Randle* marryed *Elizabeth* the daughter of *Sir Ralph Leicester of Toft in Cheshire*, by whom he had no issue, and the said *Sir Randle* ⁷⁷*dyed the 6th of September in the 4th and 5th years of Philip and Mary, 1557.* So that the said *Sir Randle* did not dye young, living at least 39. years after his sayd first Marriage; Nether did the said *Philip* become heir, but *heir-male* to the said *Sir Randle*.

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[Page 77.]

To the Three & Twentyeth.

Whereas *Sir Peter* was charged with saying, *that the 78 Herald in the reign of Queen Elizabeth made for the Coat of Sir Randle Mainwaring the elder, Barry of Twelve pieces, Argent & Gules,*

[Page 78.]

when in truth the said *Sir Randle* did then usually bear *Argent, Six Barulets Gules*, and that *Sir Peter* (as appears by the 330. page of his Great Book) knew the Coat to be *Six Barulets*, and not to be *Barry of Twelve peices Argent & ⁷⁹Gules*; *Sir Peter* answers, that it is true, he sayd the ancient Deed of Roger Mainwaring made in the reign of King Henry the Third was sealed with an Escoccheon of *Six Barulets*; But also says, that the Coat devised for the said *Sir Randle*, Guillim the Herald calls it *Barry of Twelve pieces*, and he says, he knows not the Criticisme in these termes of Heraldry, &c: and he says, he hath committed no error at all, for he there vouched Guillim for it; But herein *Sir Peter's* unwillingness to confess an Error will easily appear, ffor though it be true that *Guillim* did erre, awell as *Sir Peter*, in saying that the Coat of *Sir Randle Mainwaring* was *Barry of Twelve pieces, Argent and Gules*, Yet *Sir Peter*, but not *Guillim*, erred in saying, In the reign of Queen Elizabeth the Herald made for this *Sir Randle's Coat*, *Barry of Twelve pieces, Argent & Gules*;

[Page 80.]

ffor *Guillim* sayd no such thing, and the ⁸¹Coat that the Herald then directed to be born, was not (as *Sir Peter* says) *Barry of Twelve Pieces Argent & Gules*, but *Argent Six Barulets Gules*; And the reason why the said *Sir Randle* (my Great-grandfather) left off the *Two Barres* (though there be Deeds without date sealed with *Two Barres*) was, because there were more ancient Deeds of his Auncestors ⁸²sealed with *Six Barulets*, then there were that were sealed with *Two Barres*; But *Sir Peter* in stead of confessing this Error, runs into another, in the 23th page of his

[Page 81.]

Answer to my Admonition, where he says, that here I confessed what he sayd, to be truth, that the Herald in the reign of Queen Elizabeth made for *Sir Randle Mainwaring's Coat*, *Barry of ⁸³Twelve pieces, Argent and Gules*, Whereas I am sure I did neither there, nor anywhere else say any such thing.

To the Four & Twentyeth.

Whereas he sayd the Fabrick of Over-Peover being now of

Bricke, was built in 1586, and I sayd, part was built in 1585. and part in 1586, he says it is a worshipfull exception, and that it is more ⁸⁴proper to ascribe the time when it was built to the finishing of it, then when it was begun, for it was not all built, till it was finished; To which I answer that there had been little cause for this objection, if I had not told him that one part was built in one year, and another part in another year, But an exact Writer ought to put things exactly down; But ⁸⁵this Rule, that an House must be sayd to be built in the year that it is finished, is a very odd one, for then an old house that was almost but not wholly built an *hundred years agoe*, if the rest should be built this year might be sayd to be a very new House, though the greatest part thereof by much, was built an *hundred years since*.

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⁸⁶To the Five and Twentyeth.

[Page 86.]

He doth acknowledg his words were not well order'd, when he sayd Sir Philip Mainwaring was *Secretary of Ireland to the Earle of Strafford*, whereas the said *Sir Philip* was His Majestie's Secretary of State there, and further sayth that *he corrected it in his Notes at the side of his owne Book long before, without any Admonition ⁸⁷from Sir Thomas*; But as it is strange that he did not discouer this Mistake concerning *Sir Philip Mainwaring*, who was his Mother's Brother, in all those years that his Book was written before it was printed, (which was very many years) so on the other hand, if he did discouer it without any Admonition from mee, yet his Book being printed with that Mistake in it, I had reason ⁸⁸to take notice of it, and soe am justifid in what I did.

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To the Six & Twentyeth.

He would excuse himselfe, because he says he did write according to what we say in the Country; But an exact Writer should write as it really is, and not as people say in the Country; And

- [Page 89.] I only named the house to shew it was not in *London*, ⁸⁹but (in *Westminster* and) a good way from thence.

To the Seven & Twentieth.

- In which I observed, how he had omitted in his 336. page, that *Sir Robert Brerewood* was made *Serjeant at Law*, 1640. as also that he was made one of the *Judges* of the Court of *Kings-Bench*, 1643. As also how he had sayd in his 187. page, that *Sir Robert Brerewood* ⁹⁰*was made* Judge of the *Common Pleas* in 1643. whereas the King did constitute him in the year 1643. *unum Iustitiariorum ad Placitu coram Rege*, that is, one of the *Judges* of the *Kings Bench*, or *Upper Bench*; but he was never Judge of the *Common Pleas*. And whereas I had also observed how in the 334. page of his Great Book, he had sayd, *Sir John Nedham* who married ⁹¹*Margaret* the daughter of *Randle Mainwaring* was *Iusticiarius de Banco*, and *Judge of Chester*, i. *Edw. 4.* and that I did thereupon suppose he did erroneously take *Iusticiarius de Banco*, to be a Judge of the *Kings Bench*, as he had erroneously taken *Iusticiarius ad Placita coram Rege* to be a Judge of the *Common Pleas*, and I also gave this reasoun, that I did believe he took *Iusticiarius de Banco* ⁹²to be a Judge of the *Kings Bench*, or else I believe he would have told us, that the said *John Nedham* was afterwards made a Judge of the *Kings Bench*; ffor he had a Patent to be one of the *Judges* of that Court, 1472. ii. *Edw. 4.* as may be seen in the *Chronica Series* at the end of Mr. Dugdales *Origines Iuridiciales*, printed in the ⁹³year 1666; His Answer is, *that for the First, it was not necessary, nor materiall, to take notice in that place of Sir Robert Brerewood's being made either Serjeant at Law, or Judge of the Kings Bench; ffor though it would have been fuller to have put them in here, yet it is no Error without it. And I had before (as Sir Thomas here confesseth) among the Recorders of Chester, pag. 187. 94 there taken notice both of his being Serjeant at Law, and being made Judge of the Common Pleas; Howbeit Sir Thomas sayth, it should have*

been Iudge of the Kings Bench ; Be it soe, I had it but by common fame; Then as to Iudg Nedham I called him Iusticiarius de Banco, p. 334. which Sir Thomas supposeth I did there erroneously take for a Iudge of the Kings Bench, yet doth ⁹⁵ not Sir Thomas find me anywhere so expounding it, so that Sir Thomas will suppose I have committed an Error before there be one ; In which Answer the Reader may easily perceive how unwilling Sir Peter is, to acknowledg his mistake in calling *Sir Robert Brerewood* a Iudg of the *Common Pleas*, for he only fayes he had, pag. 187. taken notice both of his being Serjeant at Law, and ⁹⁶ being made Iudge of the Common Pleas; howbeit *Sir Thomas saith it should have been Iudge of the Kings Bench, &c: So loath he is to directly confess his Error, in calling him Iudge of the *Common Pleas*; And then as to that of Iudg Nedham, he fayes, I do not anywhere find him expounding Iusticiarius de Banco to be Iudg of the Kings Bench, so that ⁹⁷ he fayes, I will suppose him to have committed an error, before there be one ; But I believe the learned Reader will easily discerne, and rest satisfied, that as Sir Peter did erroneously take *Iusticiarius ad Placita coram Rege* to be Latine for a Iudge of the Court of *Common Pleas*, So he did also erroneously take *Iusticiarius de Banco* to ⁹⁸ be Latine for a Iudg of the *Kings Bench*, or else he would have taken notice that Iudg Nedham was afterwards made a Iudg of the *Kings Bench*, and there is hardly any one who did mistake the one, but he would mistake the other also, And therefore I think Sir Peter had done better, ingeniously to have acknowledged ⁹⁹ both his Errors, then to answer as he doth concerning the same ; And whereas he sayth in the 28. page, that what he fayd concerning *Sir Robert Brerewood*, he had it but by *common fame*, I wonder how that could be, ffor when was there ever any common fame that *Sir Robert Brerewood* was made a Iudg of the Court of *Common Pleas*, being ¹⁰⁰ he was never any Iudge of that Court ?

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[Page 99.]

[Page 100.]

To the Eight & Twentieth.

He doth acknowledg that to be a very materiall Mistake,
 [Page 101.] ¹⁰¹ soe that there needs noe more to be sayd concerning the same.

To the Nine & Twentyeth.

Whereas he sayd that the Stable and Dovehouse at *Poover*
 were built in the year 1654. whereas the Stable was built in the
 year 1653. and finished within the year 1654. and the Dovehouse
 [Page 102.] was not built till 1656. He answers, *This 102 is another childish
 exception to be put in print, nether is the first of these any error at
 all;* But as that of the Dovehouse is clearly mistaken two years,
 so it is true, that the Stable was built in the year 1653. ffor it
 was and would have been a Stable, if that ffret-worke over the
 head, and the carv'd worke and turn'd worke wth was done in the
 [Page 103.] year 1654. ¹⁰³ had never been made.

To the Thirtyeth.

Whereas he had sayd, that Margaret *the daughter of Sir Ran-*
dle Mainwaring the younger, and wife of Henry Birkenhead dyed
at Chester, 25. July, 1661. when in truth she dyed on Saturday
 the 20th of July, 1661. and was buried at *Backford* on Tuesday
 [Page 104.] the 23th of the same moneth, His Answere is, ¹⁰⁴ *that possibly he
 might miswrite the number 25. for 20. or it might be mistaken by
 the Printer;* But a Mistake he doth confess it is, and if it was
 the Printers, why did he not take notice thereof when he did
 correct others of the like kind?

Thus I have gone over *Sir Peter's Answer* to my *Admonition*,
 [Page 105.] and have shewed that ¹⁰⁵ he cannot clear himself from any one of
 those things which I layd to his charge; Neither do I believe
 any man living can shew soe many Mistakes within the Compasse
 of any two Sheets that were ever put in print.

Before I conclude what I have here to say, I thinke fit to observe how *Sir Peter* in his *Answer* to my *Admonition*, ¹⁰⁶page 38. [Page 106.] fayes thus, *If Sir Thomas shall not aver against a Record (as sometimes he hath done against an Originall Deed) his Cavills cannot smother the truth, nor defend what he here sayth, when it shall come publiquely to be scanned*; By which he first implies that I have averred against an Originall Deed, which I do deny, and cannot imagine what he ¹⁰⁷doth mean thereby, and seconldy, he ¹⁰⁷[Page 107.] doth thereby insinuate that I cannot disprove what he doth suppose to be the age of *Matilda* (Countess of *Chester*) and some other things, unlefs I aver against that Record which *Sir Peter* in that Case doth cite, But as I shall agree with him that no man can aver against a Record, as also that no man can make out a Record by aver-¹⁰⁸ment, (that is, no man will be admitted to ¹⁰⁸[Page 108.] say, a Record fayes so, or a Record doth not say so, but he must either produce the Originall Record, or else a Copie thereof, and prove it to be a true Copie) Yet for all this, the Law will give any man liberty to prove the falsity of any Record, as to matter of fact that is brought against him, ¹⁰⁹if so he can; (And this ¹⁰⁹[Page 109.] manifestly shews that *Sir Peter* doth not understand what it is to aver against a Record) To make good what I here say, On Tuesday next before the ffeast of *St. Nicholas* the Bishop, in the 6th year of *Ric. 2.* when *William Mainwaring* my Ancestor, Son to *Ioane* one of the daughters and Coheirs of *William Praers* of *Baddeley* was ¹¹⁰beyond the Seas in the King's Service, *John* Son ¹¹⁰[Page 110.] of *John* Son of *Henry de Honford* brought an Action against one *William Pryden* for a Mefusage and eight Acres of land in *Burland* in *Cheshire*, pretending himself to be the Son and heir of *Margery* the other daughter and Coheir of the said *William Praers*, and also pretending that the said *William Pryden* had disseised his said Mother *Margery* of the ¹¹¹said Mefusage and ¹¹¹[Page 111.] lands, and at the said time, the said *John* Son of *John* Son of *Henry de Honford* got possession of those lands; But notwithstanding this, the said *William Mainwaring* upon his returne into *England*, by an Inquisition now remaining in the *Exchequer*

at *Chester*, dated the 28th of february, 21. Ric. 2. in the life time
[Page 112.] of the said *John Son of John Son of Henry de Honford*, did prove that the said *John Son of John Son of Henry de Honford* was Base Son of her the said *Margery*, and not her Son and Heir, and that there was a Combination betwixt the said *John* and the said *William Pryden*, And the said *William Mainwaring* during his life had all the Land of the said *Margery* after her death,
[Page 113.] and dying without issue disposed of her ¹¹³lands, as he pleased, and they were enjoyed accordingly ;

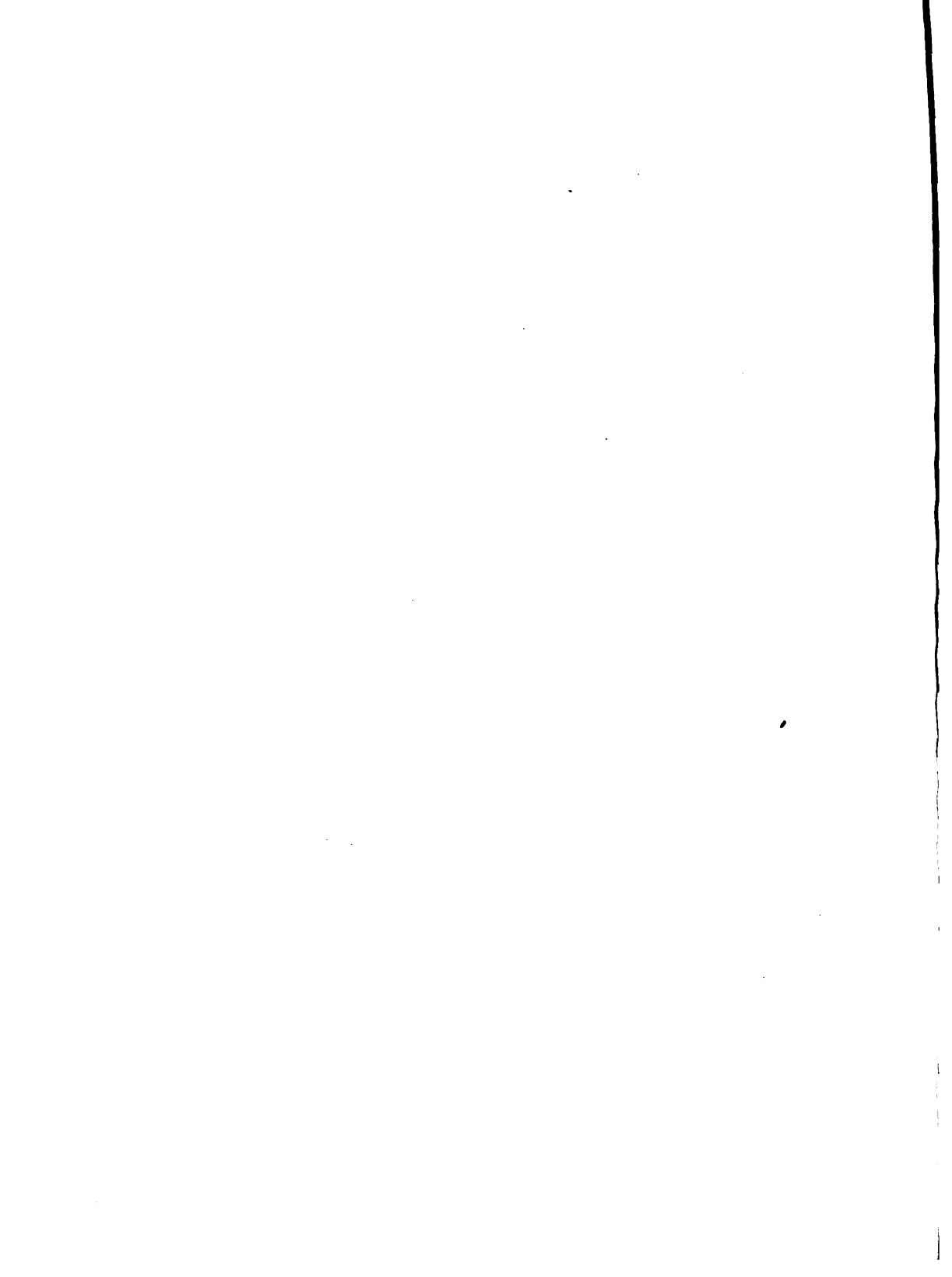
Soe also, if *John a Stile* and *John an Oakes* be at Suit concerning land, and *John a Stile* have one or more Verdicts, and recover against the other, notwithstanding that Record or Records, *John an Oakes* may bring it about againe, and plead the land to be his,
[Page 114.] and perhaps recover the same, And ¹¹⁴this *Sir Peter* knows by a Case of his owne, is not impossible to be done ; Soe also if I should sue *Sir Peter Leicester* for some Land of his, and in a Record alleadg the said land to be my land, *Sir Peter* notwithstanding that the said Record sayd that Land was mine, might plead and also prove that land to be his, So that the disproving [Page 115.] that matter of fact which ¹¹⁵is contained in a Record, is not an averring against a Record, and therefore *Sir Peter* by this devise cannot take away my libertie of disproving what he hath sayd in the aforesaid Case, ffor I doubt not but all persons who have read my book entituled, *The Legitimacy of Amicia clearly proved*, are abundantly satisfied of *Sir Peter's* Mistake of the age of *Matilda Countess of Chester*, ¹¹⁶notwithstanding the said Record.

And I also here declare, that notwithstanding what I have here written, I doe not at all doubt, but that *Hudard* or *Odard* mentioned in *Domesday-Booke*, was the lineal Male Auncestor of the *Duttons of Dutton*, But I also think it is full as clear that *Ranulphus* ¹¹⁷mentioned in the said Book, was the undoubted lineall Male Auncestor of the *Mainwarings of Peover*, and I suppose every impartial Reader will agree with me herein.

T H E
LEGITIMACY
O F
AMICIA,
DAUGHTER OF
HUGH CYVELIOK
Earl of *Chester*,
CLEARLY PROVED.
With Full
ANSWERS to all OBJECTIONS
that have at any time been made
against the same.

By Sir *THOMAS MAINWARING*
of *Peover in Cheshire*, Baronet.

LONDON,
Printed for *Sam. Lowndes* over against the
Exeter Exchange in the *Strand*, 1679.



¹T O T H E

[A 1, recto.]

R e a d e r .

Courteous Reader,

OW unwilling I was to have enter'd into a publique Debate concerning *Amicia*, the Daughter of *Hugh Cyveliok Earl of Chester*, I think doth clearly appear in my Epistle to Sir *Peter Leicester*, before my Defence of the faid *Amicia*, wherein I told him, That if he would have been contented, to have delivered what he did conceit concerning her, as an uncertainty onely, (as he had done that of *Roger Son of the said Earl Hugh*) that he knew I would have ²rested satisfied with the Judgment of those many knowing and unconcerned Persons, that had dissented from him therein, and would never have given him and the Reader the trouble of any lines of mine.

[A 1, verso.]

Though Sir *Peter Leicester* would not grant me this request, yet of his own accord, he proposed at the first, (as appears by several Letters of his to me, which I yet have, and were all written with his own hand) that what I had objected against his Reasons, should be printed in the Body of his *Historical Antiquities*; But afterwards altering his mind therein, he offer'd to have it put into

[A 2, recto.] the *Addenda*, at the end of his said Book ; and he withal did declare, that he intended not to reply, but if he did, he would reply but once, and after-⁸wards sent me a short Reply, which he there said was the last that he would write concerning the same.

Notwithstanding this, he did again change his mind, and was unwilling that what I had written, should be printed with his *Addenda*, at the end of his said *Historical Antiquities*; and instead of Printing the short Reply, which he sent to me, he sent for the said Reply back, and did Print an Answer to my *Defence of Amicia*, which was larger than what Sir *Peter* and I had then both of us published upon that occasion ; for, as appears in my *Defence of Amicia*, Sir *Peter*'s words, and what I did write, were comprehended in 75 pages, whereas his Answer alone did contain 79. And in that Answer of his, which was dated *May 15. 1673.* he did also in Print affirm, that [A 2, verso.] he had taken leave ⁴for ever of that Controversie.

But for all these Declarations both under his Hand, and in Print, he put out another little Book, which he also called *Addenda*, or some things to be added in his said Answer dated *November 6. 1673.* Then he put out two Books together, the one called, *A Reply to my Book*, Entituled, *An Answer to Sir Peter Leicester's Addenda*, Dated *April 14. 1674.* and the other he was pleased to call, *My Law Cases Mistaken*, and was dated the first of *May 1674.* And afterwards he Printed another, which he called, *An Advertisement to the Reader*, and was dated on the third day of *March* following ; but because I found very little of weight in this last Book, I did not then publish any Answer to the same.

"But notwithstanding this forbearance of mine, Sir Peter [A₃, recto.] did again put out at once, three several Books, the first whereof he called his *Second Reply*, which was dated *May 28. 1675.* the second he called *Peroratio ad Lectorem*, and it was dated *December 17. 1675.* and the third he called, *The Case of Amicia truly Stated*; which, though Printed and Paged after his *Peroratio*, was dated before it, *viz. August the 5th. 1675.* the reason whereof an intelligent Reader I suppose will easily discern; and in all these three Books, as also in his *Advertisement to the Reader*, there was little if any thing that was new, except two Records.

In the latter end of his said *Peroratio*, he said, *He had done if I had done*; which I looked upon to be as much as if he had said he "would never have done, so long as I [A₃, verso.] did write; upon which I was put to a stand, and did not well know what to do; for as I consider'd on the one hand, that I had the honour to be her Heir Male, and that not only most of the great Families in *England*, but also, *Abfit verbo Invidia*, our most gracious Sovereign, and many other great Kings and Queens did come out of her Loins, and that therefore I was bound in duty to use my Endeavours to clear her herein; so on the other hand, I concluded, that if I did continue Writing, I should perpetuate the Controversie, which I was wholly unwilling to do and did therefore resolve*, as far as in me did lie, that nothing more of mine should be published in the life-time of 'Sir Peter, * See *My Admonition* p. 20. whethersoever he did out-live me or not. And I do assure the Reader, that I did not make this delay, upon any fear of what could reasonably be supposed could have

been by him replyed; for as I have answered all those numerous Arguments, which he hath hitherto made use of, so I see no cause to suspect, that he could have discovered any new one, which would have been more strong than those formerly brought; and though he be dead, yet all learned persons can easily judge whether what is here said be substantial, or not; and I profess I do not write this, out of any conceit that it is any disgrace to descend of a Bastard; but only because I conceive that my Grandmother is very much wronged herein; for I believe there is scarcely any person whatsoever, (if any at all) but ⁸it would appear that he did descend of some one that was Illegitimate, if the descent of all those persons was known, with whom his Family had match'd, and of all others of whom he did collaterally descend.

[A 4, verso.]

PEOVER,
Dec. 24.
1678.

T. M.



THE

[Page 1.]

LEGITIMACY

OF

AMICIA,

Daughter of

Hugh Cyveliok Earl of Chester,

Clearly Proved.



Efore I come to the Reasons which have been alledged either for or against *Amicia*, I hold it necessary to recite these three Deeds following, that those who read them, and the Reasons on both sides, may the better understand the full state of the Case.

^a *H*ugo Comes Cestr' Constabular' Dapifer' & omnibus Baronibus suis & Universis Ballivis & hominibus suis Francis & Anglicis tam praesentibus quam futuris salutem. Sciatis me dedisse & concessisse & hac praesenti Karta mea confirmasse Radulpho de Menilwarin cum Amicia Filia mea in libero maritagio servitium Gilib. filii Rogeri, scilicet, servitium trium Militum faciendo michi servitium duorum Militum ille & haeredes sui michi & haeredibus meis, quare volo & firmiter præcipio ut nullus super hoc eum vel haeredes suos vexet, vel amplius quam servitium duorum Militum de hoc prædicto tenemento requirat. Teste R. Abbe Cestr' Bertreia

[Page 2.]

*Comitissa Cestr' Sim. Thuschet, Rogero de Livet, Gilib. filio Pigot.
Rob. fratre suo, Frumb. de Ridford. Willielmo de Meinilwarin,
Rob. filio Ham. Bettr. Cam. Rob. de Meinilwarin, Ran. de Lee,
Rad. Clerico, Petro Clerico qui hanc Kartam fecit & multis aliis
apud Lee.*

[Page 3.]

R Adulfus de Meidnilwar' omnibus præsentibus & futuris ad quos præsens scriptum pervenerit salutem. Sciatis me dedisse & concessisse & præsenti carta mea ³ confirmasse Henrico de Alditeleg in liberum maritagium cum Bertrea filia mea Smelewde cum pertinentiis & Senellest': Cum pertinent. & dimid' Pichemere cum pertinentiis suis & i. Marc. de redditu annuo in Civitate Cestr' de terra que fuit Fagun. quam Robert' filius Ermwi de me tenuit illi & hæredibus suis qui de dicta Bertrea filia mea pervenient habend' & tenend' de me & hæredibus meis in feodo & hæreditate libere & quiete plene & pacifice in bosco & plano in pratis & pascuis in aquis viis & in semitis in vivariis & in molendinis & in omnibus locis & libertatibus prædictis terris pertinentibus sicut liberum maritagium melius & liberius teneri pot': Et ego & hæredes mei illi & dictis hæredibus suis contra omnes homines dictas terras Warrantabimus. Test' Ran' Com' Cestr'. Hug' Com' Ultoniae, Phil' de Orreby tunc Justic. Cestr. Joh. de Ptell' Hug. Malebiss. Ric. de Vern. Ran. de Meidnilwar. Clerico. Lidulf. de Tuaml' Rob. de Periis, Ric. de Kingest. Norm. Pant. Tho. de Orreby, Alured. de Sulinni. Pet. Chan. Gg. de Aldith. Ric. de Rodest. Clerico & multis Aliis.

[Page 4.]

O Mnibus hanc Cartam visuris vel audituris Rogerus de Meinilwarin æternam in Domino salutem. Noverit Universitas vestra me pro salute animæ Domini Ranulphi quondam Comitis Cestræ & Lincolnæ Avunculi mei & pro salute animæ meæ & animarum antecessorum & successorum meorum dedisse concessisse & hac præsenti Carta mea confirmasse Deo & Beatae Marie & Abbatii & Monachis de Deulacresse & eorum Grangie de Biveleg. in liberam puram & perpetuam Elemosynam liberam communam in bosco meo

de Pevere, scilicet, Ut accipient de eodem bosco husbot & haybot rationabiliter per visum alicujus forestariorum meorum quantum necesse habuerint, sine impedimento aeriarum nisorum meorum ubicunque nidificaverint, Præterea dedi eis liberam pessonem & quietam de pannagio quinquaginta porcis quandocunque voluerint in prædiō nemore meo de Pevere, pro hac autem donatione & concessione mea, Ego Rogerus prædictus & hæredes mei de prædictis Abbatie & Monachis de Deulacresse nichil exigere poterimus, nisi orationes & suffragia ordinis Cisterciensis. Ego vero & hæredes mei sepedictam donationem & concessionem meam sepedictis Abbatis & ⁵Monachis & Grangie de Biveleg contra omnes gentes Warrantizabimus imperpetuum. Et ut hæc donatio mea rata & inconcussa in sempiternum perseveret eam præsentis Cartæ testimonio & Sigilli mei impressione roboravi. Hiis testibus Willielmo de Menilwarin. Willielmo Capellano de Lauton. Ricardo de Moston. Bened. de Cawdray, Johanne de Motlawe, Willielmo de Pevere, Hugone de Weloc. Nicolao de Wereford, Gilberto Gekell, & aliis.

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Now that the said *Amicia* was undoubtedly legitimate, will be proved by these following Arguments or Reasons;

- I. First, Because the said *Hugh Cyveliok*, as appears by the first of the said Deeds, did give unto *Ralph de Menilwarin* or *Mainwaring* with his daughter *Amicia* in free Marriage the service of *Gilbert* son of *Roger*, viz. the service of three Knights Fees, doing to the said *Hugh* and his Heirs the service of two Knights Fees; But our Common Law neither now, nor at any time heretofore allowing that Lands or Services could be given *In libero Marita-⁶gio*, with any person that was not of the blood of the Donor, as you may see *Coke* upon *Littleton*, Fol. 21. b. Consequently neither Lands nor Services could be so given with a Bastard daughter by the reputed Father, because a Bastard is not *de sanguine Patris*, as you may find *Dyer*, Fol. 374. b. And therefore it necessarily follows, because the said *Amicia* had

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Services given with her in Franke Marriage by her said Father, that the said *Amicia* was not a Bastard.

- II. Secondly, If the Reader please to observe, how in the first Deed, *Hugh Cyveliok's* Countess is a Witness to the giving of those Services in Free Marriage with *Amicia* daughter to the said Earl *Hugh*; As also how in the second Deed, *Ralph Mainwaring's* daughter is called *Bertred* after the Countess, which probably, according to Sir *Peter Leicester's* opinion under his own hand in *April, 1664*, was occasioned by the said Countess being Godmother to the said *Bertred Mainwaring*; As also how *Randle Earl of Chester*, was a Witness to what was given with the said *Ber-tred Mainwaring* in Free Marriage to *Henry de Alditelegh*, who was Great Grandfather to the Famous *James Audley* who warred in *France*; As also how, as appears in Sir *William Dugdale's* Antiquities of *Warwickshire*, Pag. 88. *Ralph Mainwaring* was with the said Earl at *Coventry*, and a Witness to his Charter to the Burghes there; As also how *Roger de Meinwaring* and *Henry de Alditeley*, who married his Sister. *Monast. Anglic. part. I.* pag. 891. are Witnesses to the Deeds of *Randle Earl of Chester* and *Lincoln*, concerning his Abby of *Deulacres*; As also how the said *Roger Mainwaring*, as appears by the said third Deed, did give some Priviledges to the said Abby of *Deulacres*; As also how *Ralph Menilwarin* or *Mainwaring*, as appears by Sir *Peter Leicester's* Historical Antiquities, *part 2.* pag. 130, 131, 139, 143, and 144. is a Witness to one Deed of *Hugh Cyvelioks*, and to three other Deeds of the said Earl *Randle* (who in some of them is also stiled Duke of *Britain*, and Earl of *Richmond*;) As also how the said *Ralph de Meindwarin* or *Mainwaring*, is a⁸ Witness to *Hugh Cyveliok's* Deed of Confirmation to the Priory of *Calc* in *Darbishire*, as you may see in the Additions to the Second Tome of *Monasticon. Anglic.* Printed with the Third Tome, pag. 97. I shall leave it (without any more words) to the Reader to

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judge, whether these Circumstances be not such, as do shew a more great and constant Intimacy, betwixt the said two Families, than probably would have been, if *Ralph Mainwaring* had married but an illegitimate daughter of the said Earl.

III. Thirdly, Because as you may see in the said third Deed, *Roger Menilwarin* or *Mainwaring*, Son of the said *Ralph* and *Amicia*, doth call *Randle Earl of Chester and Lincolne* his Uncle, which if *Amicia* had been illegitimate he would not have presumed to have done; for though it be true, that *Bastards* in *Histories* and *Records* are many times called, Cosin, Brother, Uncle, Son, and Daughter, yet that is done where the persons came to be very Great, as *Robert Earl of Gloucester* did, or else they are so called by ⁹those that write the Histories of them, or else are so termed by their Relations, who out of their humility, did condescend so to stile them on ordinary occasions, though it were not their due; But I believe it will be very hard to find one that can certainly be proved a *Bastard*, or the Son of a *Bastard*, who doth in a Deed made by himself, call so great a person as the Earl of *Chester* was, his Brother or Uncle, unless he came to be a very great person himself, so that this Argument is also of very great force and weight.

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IV. Fourthly, I do conceive, that *Hugh Cyveliocks* passing of services in the first Deed to the said *Amicia*, and using these words, *Cum filia mea*, doth absolutely prove that she was a lawful Child, and by consequence by a former Wife; for if you take notice of what Sir *Henry Spelman* writes in his *Glossary*, on the word *Bastardus*, you will find him quoting *Coustum. du Normand Artic 77. in Annot.* Thus, *Quoties enim agitur de honore vel commodo filiorum, appellatione filiorum non com-¹⁰prehenduntur Bastardi*, I suppose therefore in this case, *Amice* would not have been stiled *Filia*, as

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she is in the said Deed, unless she had been a Legitimate Child.

- V. Fifthly, I desire the Reader well to observe these two Deeds following, the first whereof doth belong to *Henry Mainwaring of Kermincham*, in *Cheshire* Esquire, and the other to *Thomas Ravenscroft of Bretton* in the County of *Flint*, Esquire, the words whereof do here follow, as they were copied out several years since from the Originals, by Sir *William Dugdale Knight*.

[Page 11.] **S**Ciant & omnes praesentes quam futuri quod ego Robertus Dominus Moaldie & senescallus Cestrie, concessi & praesenti Karta confirmavi domui sc̄e Werburge Virginis in Cestria & Monachis ibidem Deo servientibus totam Villam de Gooftree plene & integre cum omnibus pertin' suis in puram & perpetuam elemosynam pro salute anime mee & animarum prædecessorum meorum, liberam quietam & solutam ab omni seculari servicio & omni seculari exactione. Ita quod in eadem Villa de ¹¹ Gooftree nihil ad opus meum vel hæredum meorum retinui præter elemosynam & orationes & tantam libertatem in ipsa eadem Villa prædictæ domui & prædictis Monachis concessi quod in posterum nullus hæredum meorum quicquid libertatis superaddere possit. Et ut hec mea concessio rata & inconcussa permaneat imperpetuum eam sigilli mei appositione roboravi. Hiis testibus Rad' de Menilwar' tunc Justiciar' Ham' de Masci Gwar de Vern' Rad' fil' Sim' Pho' de Orreby. Sim' de Thurschet Rog' de Menilwar' Willielmo de Venables. Toma Dispensatore Rob' fil' Picot' Petro' Clerico Com' Ricardo de Vern' Rob' de Menilwar' Brito Paulum Patr' de Moberl' Liulf' de Twamlow. Peers de Sur' Ran' de Praers' Ricardo de Kingsl' Jo' de sancta Maria, & multis aliis.

SCiant praesentes & futuri quod ego Alanus de Boidele dedi & quiet' clam' fratri meo Willielmo de Boidele & hæred' suis Doccliston in feod' & Dominicis cum omnibus pertin' infra Limam.

Tenend' & habend de Domino meo Ranl' Com' Cestr' & hered' suis faciend' servicium de prædict' terr' sc. De quatuor feod' & dimid' prænominato Domino meo Ranl' Com' ¹²Cestr' & hæred' suis. Et ego vero Alanus de Boidele & hered' mei prædict' terr' cum omnibus pertin' prænominato Willielmo de Boidele & hæred' suis contra omnes homines & feminas cum pertin' warrantizab. Et quia volo quod hec mea donatio & quiet' clam' stabilis & inconcussa & rat' permaneat præsenti scripto sigillum meum apposui. His test' Domino Ranl' Comite Cestr' domino Rad' de Mainwaringhe tunc Justiciar' Cestr' domino Roberto de Monte alto, Domino Hug' Dispensar' Domino Ham' sen' de Masy, Domino Warino de Vernun, Domino Willielmo de Venables. Toma fil' Willielmi de Goulborn, Petro de Bekering. Rob' tunc persona Gropenhale scriptor' hujus scripti & multis aliis.

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I shall also desire the Reader to take notice of what Sir Peter Leicester hath obserued in his *Historical Antiquities*, p. 160. how that Earl Randle de Gernoniis (as doth appear by the Charter there mentioned) did give the Office of Constable of Cheshire, in Fee to Eustace, Baron of Halton, and his Heirs; and did constitute the said Eustace (to use the words of the said Charter) *Hæreditarie Constabularium & Supremum conciliarium* ¹³post me & super omnes optimates & Barones totius terræ meæ. As also p. 161. how the Baron de Montealto or Moald, being Dapifer, Seneschal, or Steward of Cheshire in Fee, had the second Place, which is also confirmed by several Deeds, mentioned in Sir Peter Leicester's Book, p. 129. 130. 139. 144 and 162. In all which, the Constable and Steward are named before the Justice of Chester, and all the other Barons; which being so, it will be difficult to give a Reason (if Amicia was but a base Daughter) why Sir Ralph Mainwaring, in the Deed aboveſaid of Alan de Boidele, is named as a Witnes next to the Earl of Chester, and before Sir Robert de Monte-alto or Moald, Steward of Cheshire, and ſo many of the other Barons; as also in a Deed mentioned in Sir Peter's Book, p. 139. why the ſaid Ralph Mainwaring is

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named next to the Countes of *Chester*, and before *Roger* Constable of *Cheshire*; as also why in a Deed in the 143 page of the said Book, the said *Ralph Mainwaring* is again named next to the said Countes, and before *Ralph*, the Steward of *Cheshire*.

[Page 14.] But if *Amicia* was a Legitimate Daugh¹⁴ter, the reason thereof will be apparent: For though it be true, that the Husband cannot be Ennobled by the Marriage of his Wife, yet the Earl of *Chester* being a Count *Palatine*, and one that is confessed by Sir *Peter Leicester*, p. 152 and 159. to have Royal Authority within himself, and not unfitly to be stiled a *Petty King*, having under him his Constable of *Cheshire* in Fee, in imitation of the Lord High Constable of *England*, and his Steward of *Cheshire* in Fee, after the example of the Lord High Steward of *England*; and his Noblemen about him, in imitation of the Barons of the Kingdom; as also his Chamberlain, who supplieth the Place of Chancellor, and his Justices of *Chester* (who have like power to the Judges of the Courts of *Kings Bench* and *Common Pleas*) as also a Baron of the Exchequer, a Sheriff, and other Officers proportionate to those of the Crown: It is no wonder at all, if these great Persons did voluntarily give Precedence to Sir *Ralph Mainwaring* during his life, in regard he had married a lawful Daughter to one of the said Earls.

[Page 15.] Add hereunto, that when Earl *Hugh Cyvelioke*, did by his Charter mentioned by Sir *Peter Leicester*, p. 131. acquit the Abbot and Monks of *Stanlaw*, of some Toll in *Chester* (which could be but little before the said Earls death, because the said Earl died in the year 1181. And the Abby of *Stanlaw*, as is confessed by Sir *Peter*, p. 267. was founded but in the year 1178.) The said Earl in his said Charter (contrary to all former Precedents, which I have seen) doth name the Justice of *Chester* before both the Constable of *Cheshire*, and Steward of *Cheshire*; and the reason thereof, I suppose to be, because the said *Ralph Mainwaring*, who was Son-in-Law to the said Earl, was then Justice of *Chester*,

as he also was some years in the life time of *Randle Blundevill*; though the said *Ralph*, as appears by his aforesaid Deed made to *Henry de Alditelegh*, did afterwards part with the said Office, *Philip de Orreby* being Justice of *Chester*, when the said *Philip* was a Witness to the said Deed.

Now this Preeminence could not be given to the said *Ralph*, because he was Justice of *Chester* (that Office being below the Offices of Constable and Steward, as appears before) but because of the Relation of the said *Ralph* to the said Earl, and certainly such great respect would not have been shewed him, upon that account, if his Wife had been an illegitimate Child.

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VI. Sixthly, Because there was such a vast disproportion of years, betwixt *Hugh Cyveliok*, and his Wife *Bertred*, that it cannot be in reason imagined, that the said Earl *Hugh* being so great a person, should stay unmarried, until his said Wife *Bertred* was Marriageable; for the said *Bertred* was but Twenty four years of age in the year 1181. when the said Earl *Hugh* dyed, as appears, *Rot. de Dominabus, pueris, &c.* In *Scacc. penes Remem. R. Sub. Tit. Linc. Rot. 1.* by which it appears, that the said *Bertred* was born in the year 1157. But the said Earl *Hugh*, as you may find in the Third Part of Sir *William Dugdale's Monasticon Anglicanum*, Pag. 226. did, together with his Mother *Maude*, give *Stivinghale*, (which was not *Stivinghale*, vulg^d *Stishall*, in Com. *Stafford*, as Sir *Peter Leicester* in ¹⁷the 86 Page of his first Reply tells us, but it was *Stivinghale*, which is a member of *Coventry*, as you may see in Sir *William Dugdale's Antiquities of Warwickshire*, Pag. 88, 128, 129. and in Sir *Peter Leicester's Historical Antiquities*, Pag. 129.) And besides the said *Stivinghale*, the said Earl *Hugh*, and his Mother *Maude*, did give a Mill next to the Park, and some other Grounds, to *Walter Durdent* Bishop of *Chester*, and his Successors, to which Deed *Eustace* the Constable was Witness; Now the

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said Earl *Hugh* being not in a capacity to seal a Deed, until he was One and twenty years of age, and the said *Eustace* being slain (as appears by Sir *Peter Leicester's* Historical Antiquities, Pag. 266.) in a Battel against the *Welsh* in the said year 1157. If the said Deed was made immediately before the said *Eustace* was slain, the said *Hugh* must needs be at the least One and twenty years older than his Wife *Bertred*; But, it is very likely that Deed was made some years before, *viz.* immediately upon the death of *Randle de Gernoniis*; For the said *Randle* died Excommunicate in the year 1153. as ¹⁸you may see in Sir *Peter's* Histor. Antiquities, Pag. 129. and *Stivinghale*, and those other Lands were given for his Absolution, and the health of his Soul.

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But, besides what is here proved, if you look at the latter end of the *Welsh History* put out by Dr. *Powel* 1584, immediately before the Table, you will see that the 16 line of the 197 Page of the said *Welsh History* is misprinted, and that in the said Page it should have been Printed thus: *About the same time Hugh, Son to the Earl of Chester, fortified his Castle of Cymaron, and wan Melienyth to himself.* And you may also there find, that the time when the said *Hugh* wan *Melienyth*, was in the year 1142.

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Now that this *Welsh History* is of good credit, I suppose cannot be reasonably denied; for as Sir *Peter Leicester* in the 44 Page of his *Historical Antiquities* doth acknowledge, that in these *Welsh* matters he doth chiefly follow the same; so on the other hand you may find in *Vossius* his Book *de Historicis Latinis*, Pag. 389. & 390. and in *Isaacson's Chronology*, Pag. ¹⁹323. And in *Baleus* his Book *de Illustribus Scriptoribus Majoris Britanniae*, Printed at *Basil, Apud Joannem Oporinum*, Pag. 195, 196. And in *Pitseus* his Book *de illustribus Angliae Scriptoribus*, Printed at *Paris* 1619. Pag. 215. that the said *Caradoc Lhancaruan* was the Author of the said Book, and flourished in the year 1150, and by consequence was living in the year 1142, when the said

Hugh wan Melienyth; And the said *Pitseus* tells us in the aforesaid Page, that the said *Caradocus* was *elegans Poeta, eloquens Rhetor, & Historicus non contemnendus*; And the said *Baleus*, Pag. 196. fayes that he was *totus consecratus ad res gestas recentium Britanniae regulorum illustrandas*; And in *Baleus* and *Pitseus* in the aforesaid Pages, and in *Powells Notes* on the said History, Pag. 206. you may find this following *Distichon*; viz.

*Historiam Britonum doctus scripsit Caradocus
Post Cadualladrum regia sceptr'a notans.*

So that as to the proving of the taking of *Melienyth* by the said *Hugh*, and the time when it was so taken, *Caradocus Lhancaruan* is a Witness free from any exception, that can be justly made.

²⁰The onely Question therefore is, Of what Age the said *Hugh* then was? And because that is uncertain, and that I am willing to reckon so, as may be most disadvantageous to my self, I will suppose him to be then but Twelve years old, which is the same Age that *Silvester Giraldus*, in that Edition printed at *London* 1585. Pag. 203. fayes Prince *Lhewellin ap Forweth* was of, when he began to infest his Uncles, and is indeed as young, as I have obserued any to appear in such Martial Affairs. Now, if we should believe that *Hugh Cyveliok* did marry the said *Bertred* so soon as she was Fourteen years of Age, then the said Marriage would happen in the year 1171. at which time, if *Hugh Cyveliok* was born in the year 1130, and was but Twelve years old when he wan *Melienyth*, in the year 1142. yet he would be Forty one years of Age, when he married the said *Bertred*. It cannot therefore be imagined, that so great a person should continue unmarried till he was above Forty years old, or that he should marry to his first Wife, one so much different from him in years; But, when he had married a former Wife, who dyed, leaving him only a daughter or ²¹daughters, it is no wonder if in his Age, he married a young Lady, to the intent he might have Issue-male to succeed him in so great an Estate.

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Also if you look in Sir Peter Leicester's *Historical Antiquities*, Pag. 131. you may find this Deed of Earl *Hugh*, in which his Mother doth not join with him, which I think fit in this place to Transcribe.

Hugo Comes Cestriae, Constabulario suo, Dapifero, omnibus Baronibus suis, omnibus Hominibus suis, Francis & Anglicis, tam futuris quam praesentibus, salutem, Concedo Sacrimonialibus de Bolintonia stagnum meum de Dunintonia firmum terre meae sicut fuit tempore Henrici Regis, in perpetuam Elemosynam pro anima mea, & Patris mei, & meorum Antecessorum: Et præcipio omnibus Hominibus meis, quod habeant meam firmam pacem, ita quod nullus inde prædictis Sacrimonialibus injuriam vel contumeliam faciat. Teste Roberto Dapifero de Monte alto, Filippo de Kima, Simone filio Osberti, Willielmo Patric, Radulfo filio Warneri, Rogero de Maletot, Johanne Priore de Trentham, Orm ejus Cano-²²nico, Rogero Monacho de Hambi, Willielmo Clerico Comitis qui Chartam scriptit apud Beltesford, & multis aliis.

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I also think fit to re-mind the Reader, how I did heretofore acquaint him, in Print, that I had a *Pedigree* by me of the Barons *de Monte-alto*, drawn not long since by Sir Peter Leicester, and written all with his own hand, in which he makes the first *Robert de Monte-alto* Steward of *Cheshire* (who he sayes lived in the time of King *Steven*) to have Issue, (besides other Sons who were younger) two Sons, *Raph* and *Robert*, who were afterwards successively Stewards of *Cheshire* all which is certainly true.

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Now, that, *Robert de Monte-alto*, Steward of *Cheshire*, who was Witnes to this Deed, was the first *Robert de Monte-alto*, will be manifest, because the second *Robert* came not to be Steward of *Cheshire* during the life of Earl *Hugh*, as appears by the said Pedigree, as also in Sir Peter's Book of *Historical Antiquities*, Pag. 143. and in the 33 Page of my Answer to Sir Peter's two Books, where you find *Raph*²³ the Steward, elder Brother to the

second *Robert*, out-living Earl *Hugh*, and being a Witness to a Deed of Earl *Randle* Son to the said *Hugh*, it will therefore necessarily follow, if this Deed of Earl *Hugh* was made immediately before the death of that *Robert de Monte-alto*, who was a Witness thereto, that the said Earl *Hugh* was a great deal elder than his Wife *Bertred*; for though the said *Robert* did live something longer than Sir *Peter* doth take notice of, yet I think it cannot be proved that he was living any considerable time after the said *Eustace*, and I know no reason why we should conclude that *Eustace* was slain immediately after he was a Witness to the other Deed, or that this *Robert* dyed presently after he was a Witness to this Deed; nay, I think it will appear, that the aforesaid Deed to the Nuns of *Bolinton*, was certainly made some years before the said *Robert* dyed, *viz.* in the time of King *Stephen*; for if it had been made when *Henry* the second was King, Earl *Hugh* would not have said, *Sicut fuit tempore Henrici Regis*, (as he there doth) but he would have said, *Sicut fuit tempore Henrici primi*, or else he would have used some other words to ²⁴distinguish King *Henry the First*, from the then King *Henry the Second*. Now King *Stephen* dyed in the year 1154, and *Bertred* being not born till the year 1157, it will from this Deed be very clear, that if Earl *Hugh* had sealed the said Deed immediately before King *Stephen* dyed, yet Earl *Hugh* would be at the least Twenty four years older than *Bertred* his Wife. And therefore no likelihood at all, that the said *Bertred* was his first Wife.

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Against these Arguments many Objections have been raised, that so they might make out in number, what they did want in weight; and particularly against the first Argument, because if that hold, there is no doubt, but the said *Amicia* was Legitimate;

And first, it is objected, That *Mainwaring* was not at that time an equal Competitor to have married a Co-heir of the Earl of *Chester*, the Co-heirs being married to four of the greatest Peers of the Kingdom, and therefore from hence, they would insinuate,

[Page 25.] that the said *Amicia* was not Legitimate. To which I answer, That I do not affirm that *Mainwaring* was ²⁵an equal Competitor to those great Peers, or that the said *Amicia* was a Co-heir to the said Earl *Randle*, she being, as appears from the aforesaid Arguments by necessary consequence a Daughter to *Hugh Cyveliok* by a former Wife, and so but half Sister to the said Earl *Randle*, and therefore could not be a Coheir; for, as you may see in *Littleton's Tenures*, Sect. 2, 6, 7, 8, one that is but an half Sister cannot possibly be a Coheir to her Brother, or inherit his Lands; however that could have been no substantial Argument to prove that *Amicia* was not Legitimate.

1. Because sometimes some particular persons have the fortune to marry Wives far beyond their degrees or Estates.

[Page 26.] 2. Neither was Sir *Ralph Mainwaring* so inconsiderable a person, as perhaps some may conceit him to be: For, besides that, Sir *Roger Mainwaring*, Son of the said Sir *Ralph*, did after the death of the said Sir *Ralph*, give to Sir *William Mainwaring* his younger Son, *Peover*, as also some other Lands; the said Sir *Ralph* had also the Lordship of *Waburne* in *Norfolk*, and the Lordships, (or great part) ²⁶of *Rode*, *Blakenhal*, *Warmincham*, *Notherden*, *Ashton juxta Kelsall*, *Henbury*, and *Pexhull*, *Willaston*, *Greate Warford*, *Little Warford*, *Whelock*, *Winnington*, *Cokishall*, *Tatton*, *Senelleftune*, *Smalwood*, and half of *Pichmere*; as also other Lands in *Cheshire*; the most of which came to Sir *William Trussell*, who about *Edward the First's* time, married *Matilda*, the sole Daughter and Heir of Sir *Warine Mainwaring*, Son of Sir *Thomas Mainwaring*, Son of Sir *Roger Mainwaring*, Son of the said Sir *Ralph* and *Amicia*: And the said Sir *Ralph* was Chief Justice of *Chester*, which antiently hath been a Place of that great Repute, that Dukes of *York*, *Glocester*, *Exeter* and *Ireland*, and Earls of *Nottingham*, *Wiltshire*, *Suffolk*, *Shrewsbury*, and *Derby*; besides other great Persons have heretofore enjoyed the same.

And though it hath been objected by Sir *Peter Leicester* in the 17 page of his Answer to my Defence of *Amicia*, that as to the Note of Dukes and Earls to have been antiently Judges of *Chester*, I should have distinguished of the times; for that was not till the Reign of *Richard the Second* (who made Deputies to act in ²⁷their stead) before which time he finds no such great persons Judges there; yet in this Sir *Peter* was mistaken, for that person which is said in his Catalogue of Judges of *Chester* to be Judge of *Chester* in the 15th of *Edward the Third*, and by him is onely called *Ralph Stafford*, was Baron of *Stafford* at that very time, as appears by this following Deed, the Original whereof I myself have, and did give to Sir *Peter Leicester* a Copy thereof.

[Page 27.]

Sciant praesentes & futuri quod ego Johanna que fui ux. Johannis Mautrevers in pura viduitate mea dedi concessi & hac praesenti carta mea confirmavi Alex. de Venables totam illam placeam terrae cum domibus & omnibus aliis pertin. quam habeo in villa de Wylaston que vocat. le Rudyngges Habend. & tenend. praedięt. Alex. hered. & Assignatis suis totam praedictam placeam terrae cum pertin. de capitali dom. feodi illius per servicia inde debita & de Fur. consueta libere quiete bene & in pace Fur. & hereditarie imperpetuum cum omnib. libertatib. comoditatib. communibus & easfamentiis dicte placie terrae quoquo modo pertinentib. Et ego vero predicta Johanna & heredes mei totam praedictam placeam ²⁸terre cum pertin. predicto Alex. heredibus & assignatis suis cont. omnes gentes Warantizabimus Acquietabimus & defendemus imperpetuum. In cuius rei testimonium huic presenti cartae Sigillum meum apposui hiis testibus Radulpho Barone de Stafford tunc Justic. Cestriæ Willielmo de praers Johanne de Wetenhale Thom. de Erdefwyks Ricardo de Fouleshurst Willielmo Hamelyn & Aliis Dat. apud Cestriam die dominica proxima post festum sancti Barnabe apostoli An. Regni Regis Edwardi tertii post conquestum quinto decimo.

[Page 28.]

And as you may see in Mr. *Ashmole's Institution of the Order*

of the Garter, p. 643. 670 & 688. and in *Vincent's Corrections upon Brooke*, p. 488 & 489. and in the first Part of Sir William Dugdale's *Baronage of England*, pag. 160. the said *Ralph Stafford* was one of the first Twenty five Knights Companions of the Order of the Garter, and was afterwards, *viz.* on the 5th of *March*, 25 *Edward III.* advanced to the Title of Earl of *Stafford*, and it is impossible that there could be any Dukes or Earls made Judges of *Chester* before that Earldom was united to the Crown, because there were no ²⁹such persons belonging to the said Earls (except *John Lacy* Constable of *Chester*, who was made Earl of *Lincolne*, but was not made so as appears in Sir *Peter Leicester's Historical Antiquities*, pag. 270. till the 23 of *November*, 1232. which was but something above four years before the death of *John Scot*, the last of the said Earls.) But there were ever antiently persons of good quality that were Judges of *Chester*, and if it had not always been a place of good repute, the Kings of *England* would never have made such very great persons to have succeeded them therein.

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Neither was the Case the same with the other Daughters of the Earl of *Chester*, when *Ralph Mainwaring* married with *Amicia*, as it was afterward, for *Amicia* was married in the life time of her Father Earl *Hugh*, whereas those four came to be such great fortunes upon the death of their Brother *Randle*, Earl of *Chester* and *Lincolne*, without Issue, to whom they then became Heirs, they being his Sisters of the whole Blood; and though all, or most of them were married before they came to be his Heirs, yet the ³⁰said Earl *Randle* having never had Issue, the expectations of that Estate added to their other Portions, must needs make them very considerable Fortunes; whereas *Amicia* was but of the half Blood, being a Daughter of Earl *Hugh* by a former Wife, and therefore not in a capacity to have a share in that great Estate. And whereas it hath been objected, that Earl *Hugh* matching his only Daughter, which he had by a former Wife, would have married her to as considerable a per-

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son as was either provided by himself, or his Son for his younger Children by a second Venter; I do answer and say, That I am not certain whether *Amicia* was the only Daughter that Earl *Hugh* had by his former Wife, because, I know some that pretend they can tell of some other Daughter or Daughters which the said Earl *Hugh* had by his said Wife; but I do confess, I have never seen just proof of any but her; but supposing her to be the only Child by his first Wife, I have in my first Book, pag. 23, 24 & 25. shewed that there is no strength in this Argument; And I may here further add, that if any will search for Examples, they may find very many, where the elder ³¹Sisters, sometimes, because swayed by their Affections, and sometimes for other Reasons, have not been married to so great persons as the younger Sisters have been; Neither can any one tell what Portions Earl *Hugh* gave to *Amicia*, or to any of his other Daughters; Neither is there any necessity that the elder Sister, because by a former Wife, must have as great a Portion as a younger Sister by a latter Wife; because many times persons are not able to give so great Portions in their younger days, as afterwards: and because, the Children of the living Wife, are oftentimes better provided for, than those of the dead Wife; and of this, I could, if I pleased, instance in some that I know; and in case the Father dies, and leave only Issue Female by the first, and a Son and Issue Female by a latter Wife (as in this case) there is great likelihood (besides the advantage that the Sisters by the latter Wife would have by being Heirs at Law to their Brother he dying without Issue) that the Brother will naturally be more kind to those Sisters that are of the whole Blood, and about the same age, and bred up with him, than he will be to her that is but ³²his half Sister, and much older than himself.

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And though Sir *Peter Leicester* doth object in the 69 page of his Answer to the Defence of *Amicia*, That if *Amicia* had been Legitimate, she being of the first Venter, would have been more worthy than those of the Second, though that be true, when the

Sisters Claim as Heirs to their Father; yet when they come to Claim as Heirs to their Brother (as in this Case) if there be Sisters of two Venter, and the Brother be of the second Venter, then the Sisters that are of the second Venter, shall be preferred before those of the first Venter, because those of the second Venter are of the whole Blood. And those of the half Blood, are so far from being preferred before those of the whole Blood, that as I have herein before shewed the most remote of the Kindred shall be preferred before those who are but of the half Blood.

2. Secondly, Against *Amicia's* being Legitimate, it hath been objected thus;

[Page 33.] ³³If *Hugh Cyveliok* had no other Wife but *Bertred*, then *Amice* must certainly be a Bastard; for she was not a Daughter by *Bertred*, as is granted on all sides.

But *Hugh Cyveliok* never had any other Wife but *Bertred*. *Ergo, Amice* was a Bastard.

Now the *Minor* is to be proved by the Affirmer, *Oportet Affirmantem probare*; To which I answer,

First, That by this Rule, Sir *Peter Leicester* was as much bound to prove *Amicia* to be a Bastard, as I am bound to prove that *Hugh Cyveliok* had a former Wife; For he as clearly affirmed that as I affirm the other, and there is no reason why Suppositions should pass for Proofs any more in his case, than they should do in mine.

[Page 34.] Secondly, That less Proof by many degrees will serve, to prove a thing that was done long since, than will be required to prove that which was done lately. To instance in one Case, which may serve instead of many. If you be to prove a ³⁴Deed that was lately sealed, it will be expected you produce the Witnesses who

were present at the sealing and delivery thereof. If your Deed was sealed a good while ago, the proving of the Hands will be required: But if the Deed be so old, that none alive could know the Hand-writing of the Witnesses, then the Deed carries its own Proof with it: And the like reason there is in all Cases of Antiquity, and especially in those that are so very antient as this is. For, if I did only prove her called a Daughter, being it is so long since, she ought to be presumed Legitimate, unless the contrary do appear. For the proving she was not by *Bertred*, does not prove that she was a Bastard; But onely proves that she was either a Bastard, or else by a former Wife: And our Law at this day is, That a Bastard cannot be proved a Bastard but in his Life-time; and so it anciently was also, as appears by the old Treatise called *Fleta*, lib. 6. cap. 39. sect. 14. where it is thus faid, *Si autem post mortem alicujus opponatur Bastardia, non allocabitur; cum defunctus ad talēm exceptionē respondere non poterit.* Now, if a Person cannot be proved a Bastard immediately after his ³⁵ death, because he cannot answer for himself, What reason is there to charge *Amice* with Bastardy so many hundred years after her decease. And especially upon imagination onely, without direct proof for the same. And proof cannot so easily or truly be had several Hundreds of years after the Parties decease, as it might have been had within a few years after the Party was dead.

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Thirdly, If this Argument would hold as it is here framed, we should have almost nothing but Bastards in the ancient times: For if all must be Bastards, if we could not tell who their Mothers were, nor directly prove who their Fathers married, we might then conclude, most Persons to be Bastards that lived in the first and second Centuries after the Conquest. I shall not offer to put the Case upon any other Family but my own (though it doth reach a multitude of others.) But as to my own, if I mistake not, I find Eight persons whose Wives we are altogether ignorant of, and Six of those persons left Issue, all which Issue,

[Page 36.] by this Argument, would be Bastards, which I am confident no reasonable man can or will ³⁶ suppose ; I shall instance only in one, viz, *Roger Menilguarin*, who in the Reign of King *Henry the First*, as you may see in the First Part of *Monasticon Anglicanum*, Pag. 985. gave *Plumley* (a place in *Cheshire*, near to *Peover*) to the Abby of S. *Werburge* at *Chester*; and as it appears by the said Record, the said *Roger Mainwaring* had Three Sons, *William*, *Randle*, and *Wido*. Now if Sir *Peter* should affirm, that the said *William*, *Randle*, and *Wido* were Legitimate, which I verily believe he would not scruple to do, I could thus frame his own Argument against him.

If *Roger Melinguarin* had no Wife, then, *William*, *Randle*, and *Wido* Sons of the said *Roger*, were certainly Bastards : But *Roger Melinguarin* aforesaid had no Wife. Ergo, &c.

[Page 37.] Now if this Argument would hold against *Amicia*, it would also hold against these Three Children of *Roger Mainwaring*, and indeed against all other Persons whose Fathers we could not directly, and *in terminis*, prove to have been married, (the Proof lying on the Affirmers side) ³⁷the Absurdity of which is so great, that Sir *Peter* himself cryes, *God forbid all Children should be concluded Bastards, whose Mothers cannot be proved.*

Also it is very hard, if possible, to tell whose Daughter the Wife of *Robert de Ferrars*, the first Earl of *Ferrars* and *Derby* was, and yet he was certainly married, and had Issue *William Ferrars*, who lived not to be Earl, and *Robert de Ferrars* who succeeded his said Father *Robert*, in the Earldom, and *Wakelin de Ferrars*, and a Daughter named *Isolda*, married to *Stephen de Beauchamp*, and another Daughter married to *Walchelin Maminot*. So also it is unknown who was the Wife of the second *Robert de Ferrars* Earl of *Ferrars* and *Derby*, and yet he also was certainly married, and had Issue *William* his Son, who succeeded him in the said Earldom ; so also we cannot find who was

the Wife of *Ralph de Maunt* Earl of *Hereford*, and yet he was certainly married, and left Issue-male. So also *William de Mohun*, the Third of that name, and the first Earl of *Somerset* or *Dorset*, (for those two Counties alwayes going together in those elder times, and both served ³⁸by one Sheriff (as you may see in *Vincent upon Brooke*, Pag. 472.) gave occasion of indifference to give the attribute of either, to him that had *tertium denarium*, the third peny of them) was also certainly married, for his Grandchild *Reginold de Mohun* was Earl of *Somerset* after him ; and yet our Authors, who write of these things, do not know whose Daughter the Wife of the said *William de Mohun* was ; And to name no more of very many other Noblemen, whose Wives are not known, what great wonder is it that we do not know who was the first Wife of *Hugh Cyveliok*, by whom he had only Issue-female, when it is not known who were the Wives, of the above-named great Persons, although they had Issue Male, by the said Wives : And which is worthy of observation, if *Bertred* the second Wife of the said Earl *Hugh*, had dyed before her said Husband, as his first Wife did, we had not known whose Daughter the said *Bertred* had been ; for I think there is no ancient Historian, who doth speak thereof ; neither do I know of any Record, except those which relate to the said *Bertreds* Joynture or Dower, which do tell whose Daughter the said *Bertred* was.

³⁹ 3. Thirdly, It hath been objected, That whatsoever is given in Frank Marriage, is given as a Portion : But the giving of the Services of three Knights Fees in Frank Marriage, for which the Services of two Knights Fees are to be done, doth not seem to be a competent Portion, for a Legitimate Daughter of the Earl of *Chester*.

To which I answer, That the reason why Sir *Peter Leicester* calls it a Portion, is, because he would have it thought that this was all her Portion ; and thence would infer, that she was Illegi-

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timate, because so very little was given with her ; But this doth not well agree with what Sir *Peter sayes* in the 135 Page of his *Historical Antiquities*, and 63 Page of his Answer to my Defence of *Amicia*, where he tells us, That Bastards in those elder Ages, were not of such disrepute as now in our dayes ; And that the ancient Northern People admitted Bastards to succeed in their Inheritance, and that *William the Conqueror* was not ashamed of that Title, who began his Letter to *Alan Earl of Little Britain*, (as he did many others) *Ego Willielmus cognomento Bastardus* ; so ⁴⁰that I think any Man that will weigh things indifferently, will easily and readily conclude, That if she had been but a Bastard, yet being a Bastard of so great an Earl, and being married to Sir *Ralph Mainwaring*, who was no inconsiderable Person, she would have had a far greater Portion than those Services upon those terms they were given ; for those Services so given, would not be a Portion answerable to the Estate of an Ordinary Countreyman ; And this is so clear, that when Sir *Peter Leicester* was told, that it was like Sir *Ralph Mainwaring* had a great deal more with *Amicia*, he confesseth Pag. 71. of his Answer to the Defence of *Amicia*, It may be so, What then ? So that you may see he was at laft convinced, that those Services could not be her whole Portion ; And though we cannot now tell what Portion the said Sir *Ralph Mainwaring* had, yet it is very probable that the Lordship of *Henbury* in *Cheshire*, might be part of the Portion of the said *Amicia* ; for as appears in Sir *Peter Leicester's Historical Antiquities*, Pag. 107. *Henbury* was one of those Towns which *Hugh Lupus* held in Demesne ; And I do not find that any *Mainwaring* was ⁴¹possessed thereof before Sir *Ralph Mainwaring*, who was Husband to the said *Amicia*, neither have I ever yet seen or heard of any Record or Deed which shews how *Henbury* first came to the *Mainwarings*.

But besides what is here said, Sir *Peter Leicester's Rule*, That whatsoever is given in Frank Marriage, is given as a Portion ;

cannot hold good ; for any person that pleaseth may give a Woman a Portion, but no man can give any thing in Frank Marriage, with any Woman but such as is of his whole Bloud : as Sister or Cousin collateral within the fourth Degree, so as they may not Enter-marry by the Law. As Mr. *Hughes* fays in his *Grand Abridgment of the Law*, p. 970.

4. Fourthly, It hath been objected, That the Antient Historians of our Nation, as *Polichronicon*, writ by the Monk of *Chester*, *Henry Knighton*, the Monk of *Leicester*, and others ; also *Stow* and *Cambden* have Recorded the Lawful Daughters and Coheirs of Earl *Hugh*. And also the Record of 18 Hen. 3. And had *Amice* been a Legitimate Daughter, it is ⁴²likely that these Historians would not have omitted her, but of her there is *Altum silentium* among all the Historians and Records.

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To which I answser, That in this Argument, there is no weight at all ; for those Historians which Sir *Peter Leicester* doth speak of there, do not take upon them to give an account of all the Children of Earl *Hugh*, but only to tell who were the Heirs of *Randle Blundevil* which none of his Sisters could be, unlesf such as were of the whole Bloud to him ; and of this Sir *Peter* was so sensible, that in his *Historical Antiquities*, p. 138. he doth confess, that this is not a fure evincing Argument ; but Sir *Peter* did forget himself, when he said there was *Altum silentium* concerning *Amicia*, among all the Historians which he there named ; for Mr. *Cambden*, which is one of those which Sir *Peter* himself doth there mention, as he tells us, who were the Coheirs of *Randle Blundevil*, so he takes notice of the Wife of the said *Ralph Menilwarin* or *Mainwaring*, and that without any Brand of Bastardy at all, as you may see in his *Britannia*, in his Description of the Country of *Chester*, whose words are these : [Page 43.]
Cum jam Danus sub Northwich, de qua dixi, cum wevero aquas consociaverit, in occasum recta prolabitur Wever, Peverumq; recipit ab ortu, Qui præterfluit, & nomen facit Pevero, ubi habet sedem

vetusta illa nobilis familia de Meinilwarin vulgo Manewaring,
e qua Radulphus duxit filiam Hugonis Kevelioc Comitis Cestriæ,
ut constat ex charta antiqua penes Ranulphum ejusdem familie
nunc heredem. And to let you see how little strength there is in
objecting, That a Daughter is not Legitimate, because our Historians
do not mention her, I shall here inform you of one *Matilda*,
a Daughter to *Randle de Micines* or *Meschines* one of our Earls
of *Chester*, who was married to *David Earl of Dundee* in *Scotland*;
which *David* was Brother to *Malcolme*, and *William Kings*
of *Scotland*, and was Nephew to *Matilda* or *Maude* who was
Queen of *England*, and Wife to King *Henry the First*; and yet
all our antient Historians, except *John Bromton*, do wholly omit
the said *Maude*, and so also doth Sir *Peter Leicester*, though he
spent so many years in Writing and Reviewing what he had
written of the Earls ⁴⁴of *Chester* since the *Norman Conquest*;
and so do all our Modern Writers that I have read: The words
of the said *John Bromton* (who writes from the year 588, to the
year 1198.) as they are in his *Chronicon*, col. 966 and 967. are
these:

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A Nno Domini M. lxix. & Regis Willielmi quarto, Malcolmus rex Scotorum cum infinita multitudine per Cumberlandiam versus orientem se divertens, universam Teſdale & loca ejus finitima ultra citraq; feroci depopulatione vastavit. Depopulataq; quadam parte Clivelandiæ quasi ex subito Herferneſſe occupavit. Indeq; per terras sancti Cuthberti discurrens, multos rebus & vita privavit, villas & ecclesiæ cum iis qui in eas confugerant, concremando, senes & vetulæ gladiis obtruncantur, alii indifferenter confodiuntur, raptiq; ab uberibus matrum parvuli in altum projiciuntur, & lanceis excipiuntur: hac enim crudelitate maxima Scotti bestiis crudeliores pro ludi spectatulo delectabantur, qui demum in terram malam revertentes, juvenes & virgines, robustos, miserios & captivos secum duxerunt, & eos perpetua servitute dampnaverunt. in ⁴⁵ tantum ut vix effet domus in Scotia, quæ servo aut ancilla Anglii generis carceret. Tunc vero secundum quosdam, iste Mal-

*colmus rex Scotiæ in revertendo de Anglia, dictam Margaretam
dicti Edgari sororem primo invenit, & eam in uxorem duxit, per
quam post-modum ferocitatem in parte dimisit, & honestior factus
est. Et ex qua per processum temporis genuit sex filios, & duas
filias, scilicet Edwardum primogenitum, qui cum patre imperfectus
fuit; Edmundum ante patrem decedentem; Edgarum, qui post
patrem novem annis regnavit; Edredum ante patrem decedentem;
Alexandrum, qui post Edgarum fratrem suum xvii. annis regnavit,
& David, qui post Alexandrum fratrem suum xxix. annis regnavit.
Et ex Matilda de sancto Licio genuit Henricum comitem sed non
regnantem. Genuit etiam Malcolmus rex ex dicta Margareta
Matildam postea regis Angliæ Henrici primi uxorem, ex qua pro-
cessit Matildis imperatrix. Altera quoq; filia Malcolmi, Maria
nomine, Eustachio Comiti Bononiæ, postea nupta fuit, de qua pro-
cessit Matilda quæ postea Stephano regi Angliæ extitit maritata.
Henric. vero Comes filius David regis genuit tres filios, scilicet
Malcolmum, qui post David xii. annis ⁴⁶ regnavit; Willielmum [Page 46.]
qui post fratrem suum xlix. annis regnavit, & David Comitem de
Dundee. Willielmus vero rex genuit Alexandrum secundum, qui
regnauit xxxv. annis, & genuit Alexandrum tertium, qui xxxvii.
annis regnavit, & genuit Margaretam neptem regis Edwardi
Angliæ primi post conquestum. David autem comes de Dundee
filius Henrici Comitis genuit ex Matilda filia Ranulphi Comitis
Cestriæ iiiii. filias, scilicet Margaretam, Matildam, Isabellam, &
Aldam. Margaretæ vero nupsit Alano de Galeway, ex qua pro-
cessit Devergoil uxor Johannis de Balliolo, quæ genuit Johannem
de Balliolo, quem dictus rex Angliæ Edwardus primus post con-
questum in Regem Scotiæ post mortem Alexandri terii præfecit.
Alteræ vero filia dictæ Margaretæ Elena nomine, Comitissa Win-
toniæ, produxit Comitissam de Ferers Margaretam, Elenam de la
Souch, & Elizabetham Comitissam de Boghan. Matilda vero
altera filia David Comitis sine liberis decepsit. Tertia vero filia
ejusdem Comitis David Isabella, nupsit Roberto de Brus qui genuit
Robertum, & ille Robertus genuit Robertum regem Scotiæ, qui
genuit David regem Scotiæ, cui rex Angliæ Edwardus a conquestu*

[Page 47.] *tercium sororem suam Johannam ma-⁴⁷ritavit. Quarta vero filia Alda nupsit Henrico de Hastings, qui genuit Henricum, qui genuit Johannem.*

Now if a Daughter to an Earl of *Chester*, who was Wife to so great a person, was omitted by our Historians, what wonder can it be, if *Amicia* the Daughter of *Hugh Cyveliok*, and the Wife of *Ralph Mainwaring*, was also omitted by them? And as *John Bromton* did mention the said *Matilda*, because he did know there was such a one, though other Historians were ignorant thereof; and as Mr. *Cambden* did take notice of the Wife of the said *Ralph*, because he had seen the Deed which proved it, in the hands of my Great Grandfather *Randle* (who was afterwards Sir *Randle Mainwaring Knight*) so I suppose that our other Authors, both Antient and Modern, would have mentioned the said *Matilda* and *Amicia*, if they had seen what *John Bromton*, and Mr. *Cambden* did see.

5. Fifthly, It hath been objected, That without any alteration made by any Act of Parliament, the Common-⁴⁸ Law in sundry things is alter'd at this day, from what it was in former ages, long after *Henry the Second*, *Coke upon Littleton*, fol. 34. sect. 39. *Coke ibid.* fol. 3. a. fol. 8. a. at the bottom of the Page, and on the other side of the bottom, and fol. 26. b. sect. 29. wherein there is supposed to be Proofs that the Common-Law is altered in many things without any Act of Parliament, from what it was in those elder times.

To which I answer,

1. First, That if the Common-Law had been or could be altered other ways than by Act of Parliament, yet it would make nothing, as to the Point in hand, unles the Common-Law had been altered in the Case of Frank Marriage itself.

2. Secondly. That Sir *Peter Leicester* did mistake himself

when he thought my Lord *Coke* said, that the Common-Law had been altered in those particulars, which Sir *Peter* doth mention in these places that are cited before ; Indeed my Lord *Coke* tells us, that the Common-Law was taken and holden sometimes differently from what it is ta-⁴⁹ken now, and withal, fol. 8. b. at the bottom tells us, that if it be an antient Grant, it must be expounded as the Law was taken at the time of the Grant ; And these Cases which Sir *Peter Leicester* doth cite, are some of those which my Lord *Coke* doth bring to prove that the Common Law was differently taken in former Ages in some things, from what it is taken to be in this Age, but not to prove that there was a change of the Common Law, without an Act of Parliament ; To instance therefore in every one of those particulars which Sir *Peter Leicester* hath as aforesaid taken notice of ; In that in fol. 34. sect. 39. my Lord *Coke* tells us, that in antient times, as it appeareth by *Glanvil*, lib. 6. cap. 1. It was taken that a Man could not have endowed his Wife *Ad osium Ecclesiae*, of more than a third part, but of less he might ; But at this day the Law is taken, as *Littleton* here holdeth. But my Lord *Coke* says not that the Law is altered therein from what it was ; so also fol. 3. a. he says, The Parishioners or Inhabitants, or *Probi homines* of *Dale*, or the Churchwardens, are not capable to purchase Lands, but Goods they are, unles^s ⁵⁰it were in antient time, when such Grants were allowed ; here my Lord *Coke* says not one word that the Common Law is herein altered, but only that some kind of Grants were allowed then, which would not be allowed now, and this agrees with that f. 8. b. on the other side at the bottom, where he says, if it be an antient Grant, it must be expounded as the Law was taken at the time of the Grant, so also fol. 8. a. at the bottom of the page. He says of antient time the Heir was permitted to have an Action of Debt upon a Bond made to his Ancestors and his Heirs, but the Law is not so holden at this day ; so in that fol. 26. b. sect. 29. But it hath been said, that if a Man give Land to another, and to his Heirs of the Body of such a Woman lawfully begotten ; that this is no Estate Tail

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for the uncertainty by whom the Heirs shall be begotten, for that the Brother of the Donee or other Cousin, may have Issue by the Woman which may be Heir to the Donee, and Estates in Tail must be certain ; therefore our Author, to make it plain in all his Cases, added to these words (his heirs) which he shall In-gender. But that opinion is since our Author ⁵¹wrote overrul'd, and that Estate judged to be an Estate Tail, and begotten shall be necessarily intended begotten by the Donee.

So that my Lord *Coke*, doth not in any of those places say ; that the Law is therein altered, but he all along avoids that expression, and only tells us, that such and such Grants were allowed, the Law was so and so taken, and so and so holden, and such and such an opinion hath been over-rul'd, and accordingly all such other like expressions of my Lord *Coke*, are thus to be understood ; But withal it must be acknowledged (as was before expressed) that in those particular Cases, where the Law hath been holden otherwise, then it is holden now, that if it be an antient Grant, it must be expounded, as the Law was taken at the time of the said Grant. And thus, as you may see *Coke upon Littleton*, fol. 21. b. in the Case of *Piers de Saltmarsh*, and others, it was judged in King *Edward the Third's* time, and in King *Edward the Fourth's* time, That a Man might give Land to his Son in Frank Marriage, but in King *Henry the Eighth's* time it was holden otherwise, the former Books being not remembred ; but notwithstanding-⁵²ing, that this Point was judged thus differently, the Law was still the same, and all that can be said is, that some of the Judges did not judge right, according to the Common Law ; and indeed, if this Rule of Sir *Peter Leicester's* was true, that because the Judges in one Age did take the Common Law to be otherways, than it was taken in former Ages, that therefore the Common Law was changed : The Judges then could never do contrary to the Common Law ; for when they had declared (though erroneously) that the Common Law ought to be otherwise taken, than it was formerly, the Common Law by Sir *Peter's* Rule, would be thereupon changed, and what

they did, would ever be Legal, the absurdity whereof every one may easily discern.

And indeed my Lord *Coke* is so far from being of opinion that the Common Law hath or can be changed, unless by Act of Parliament, that in the first Part of his *Institutes*, fol. 115. b. he tells us, That whatsoever was at the Common Law, and is not ousted or taken away by any Statute, remaineth still. And a few lines lower he also says, The Common Law hath no Controller in any Part ⁵³ of it, but the High Court of Parliament, and if it be not abrogated or altered by Parliament, it remains still. [Page 53.]

6. Sixthly, It hath been objected, that in this very particular Case of Frank-Marriage the Law is different now from what it was in those former Ages, and this hath been pretended to be proved by the words of *Glanvil*, who lived in the same Age with *Amicia* (and as Sir *Henry Spelman* tells us) was the first that reduced our Law into Writing; as also by the words of *Braction*, who was the second that did Write of our English Laws, and lived in the time of King *Henry the Third*, as also by Precedents of some Lands given to *Geva* the Wife of *Geffrey Riddel*, and Daughter of *Hugh Lupus*, and to *Joane* the Wife of *Llewelin*, Prince of *North-wales*, and Daughter of King *John*; which Gifts of the said Lands Sir *Peter Leicester* will have to be Gifts in Frank-Marriage, and also says that the said *Geva*, and *Joane*, were both of them Bastards:

And to make this out, Sir *Peter* in that Book of his, which he was pleased to call my *Law Cases Mistaken*, pag. 5 & 6. ⁵⁴ names us seven several particulars, which he calls *Parcels of the Law in Glanvil's time and those more antient Ages*; and Sir *Peter* says they are contrary to those produced by me. But all these seven Parcels of Sir *Peter's* Law, are easily answered; for neither *Glanvil*, nor any other Author that I can find, ever said any word of the first six of them; and as to the seventh, though he there tells us that Earls and great Lords in those former Ages, did often

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Join with their Mothers, who then had the Tuition of them in Deeds and Charters, whiles they were very young, yet, as will appear anon, I believe there will be but one single Precedent found, in which any young Lord, who was under Age, Joined with his Mother, and did use her seal to any Charter or Deed; neither will that Case relate to this of *Amicia* in the least degree. But let us take a view of those words of *Glanvil*, lib. 7. c. 1. which Sir *Peter Leicester* doth so much relie upon as they are by him truly quoted in the seventh page of the second of his two Books, which words are these :

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⁵⁵ *In aliâ acceptione accipitur Dos secundum leges Romanas: secundum quas propriâ appellatur Dos, id quod cum muliere datur viro: quod vulgariter dicitur Maritagium: Potest itaq; quilibet liber homo, terram habens, quandem partem terræ suæ cum filiâ suâ, vel cum aliquâ aliâ quâlibet muliere, dare in maritagium, sive habuerit hæredem sive non, vœlit hæres vel non, imo & eo contradicente.*

Also lib. 7. cap. 18. *Maritagium, autem aliud nominatur liberum, aliud Servitio obnoxium: liberum dicitur maritagium, quando aliquis liber homo aliquam partem terræ suæ dat cum aliquâ muliere alicui in maritagium, itâ quod ab omni servitio terra illa sit quieta, & a se & hæredibus suis, versus capitalem Dominum acquietanda: & in hâc quidem libertate ita stabit terra illa usque ad tertium hæredem: nec interim tenebuntur hæredes inde facere aliquod homagium: Post tertium verò hæredem, ad debitum servitium terra ipsa revertetur; & homagium inde capiatur. Quia, si furcit pars feodi militaris, pro quantitate terræ servitium feodi inde prestabit.*

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⁵⁶ *Solet autem quandoq; terra aliqua dari in maritagio, Salvo & retento debito servitio ipsi Capitali Domino: & tunc quidem tenebuntur maritus mulieris ipsius: & hæredes sui servitium id facere, sed sine homagio usque ad tertium hæredem.*

And these are all the words of *Glanvil*, which Sir *Peter* doth any where Cite, which do relate to any Gifts made either in Free-Marriage, or in Marriage liable to Services.

And here let me observe, that whereas I have many times blamed Sir *Peter Leicester* for so often affirming that *Glanvil* said that Lands might be given with any Woman in *liberum maritagium*, whereas *Glanvil* had said no such thing, that Sir *Peter* at the last, in the second Page of that Reply, which he calls the *Second Reply*, says, *Though Glanvil hath not these very words — Lands may be given with any Woman in liberum Maritagium*; yet he saith it by consequence drawn clearly out of his words, lib. 7. cap. 18. which (Sir *Peter* says) is the same in effect. So that Sir *Peter* with much ado ⁵⁷ doth acknowledge that *Glanvil* hath not expressly said any such thing, onely it seems he fancied, that the same may be by consequence drawn out of *Glanvil's* words; which how Sir *Peter* did prove I am now to enquire into. As for those words which *Glanvil* hath, lib. 7. cap. 1. they cannot prove any such thing; for those words, *Potest itaque quilibet liber homo, terram habens, quandem partem terræ suæ cum filiâ sua, vel cum aliquâ aliâ quâlibet muliere, dare in maritagium, sive habuerit hæredem sive non, velit hæres vel non, imo & eo contradicente.* Do only prove that a Man may give Lands with any Woman in *Maritagium*, and therefore *Maritagium* being two-fold, viz. *Maritagium liberum* and *Maritagium servitio obnoxium*, *Maritagium* being the *Genus*, doth comprehend both Free-Marriage, and Marriage liable to Services; so that if a Man can give Lands with any Woman in Marriage liable to Services, he may give Lands with any Woman in *Maritagium*; and there never was any doubt made, but that a Man may give Lands with any Woman whatsoever in Marriage liable to Services; But that upon which Sir *Peter* doth most principally rely, are these words of *Glanvil*, lib. 7. cap. 18. *Maritagium, autem aliud nominatur liberum, aliud servitio obnoxium: liberum dicitur maritagium, quando aliquis liber homo aliquam partem terræ suæ dat*

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cum aliqua muliere alicui in Maritagium, ita quod ab omni servitio terra illa sit quieta, & a se & hæredibus suis, versus capitalem Dominum acquictanda.

For from thence, as you may see in the 54 page of the first of his two Books, which he calls his *Reply*, and again, at the bottom of the 29 page, and in the 30 page of the second of his two Books, Sir Peter Leicester frames this Argument :

Glanvil there saith, that a Man may give Land with any Woman in Marriage, so that it be acquit from all Service *a se & hæredibus suis, versus capitalem Dominum.*

But Land so given (saith *Glanvil*) *est liberum Maritagium.* Ergo *Glanvil* saith, Lands may be given with any Woman in *liberum Maritagium.*

[Page 59.] ⁵⁹To which I answer, That Sir Peter Leicester is the first Man, that ever, so far as I can find, went about to prove a Point of Law by a Syllogism ; and in this new way of his he hath no good success ; for his major and minor Propositions are both of them untrue ; for *Glanvil* neither says, That a Man may give part of his Land with any Woman in Marriage, so that it be acquit from all Service, *a se & hæredibus suis, versus capitalem Dominum.* Neither doth *Glanvil* say, That Lands so given (*viz.* with any Woman) *est liberum Maritagium*, for *Glanvil* onely says, That *liberum Maritagium* is when a Man gives Lands *cum aliqua muliere alicui in Maritagium, ita quod ab omni servitio terra illa sit quieta, & a se & hæredibus suis, versus capitalem Dominum acquictanda* ; that is, Free-Marriage is where a Man gives Lands with *some Woman (*viz.* one of his Kindred) in Marriage, so that it may be acquit from all Service, &c. and that Lands so given with some Woman *est liberum Maritagium*, but *Glanvil* doth not here, nor any where else ⁶⁰say, that Lands may be given with any Woman

* Note. *aliqua muliere alicui in Maritagium, ita quod ab omni servitio terra illa sit quieta, & a se & hæredibus suis, versus capitalem Dominum acquictanda* ; that is, Free-Marriage

* Note. is where a Man gives Lands with *some Woman (*viz.* one of his Kindred) in Marriage, so that it may be acquit from all Service, &c. and that Lands so given with some Woman *est liberum Maritagium*, but *Glanvil* doth not here, nor

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in *Maritagium*, so that it may be acquit from all Service, &c. for though Sir Peter Leicester doth here and many times elsewhere construe these words (*cum aliqua muliere*) with any Woman, yet they are not Latine for *with any Woman*, but for, with some Woman, for *Aliquis* when alone without *Quilibet*, or some such other like word, is Latine for some one, but not for any one, as you may see in Sir Thomas Eliot's *Bibliotheca* or Library, Printed 1545. where he renders the word *Aliquis* thus; *Aliquis, Aliquæ, Aliquod, Some. Aliquis est, he is a man of no small reputation; So also in Mr. Gouldman's Dictionary printed at Cambridge, 1674. Aliquis vel Aliqui, Aliquæ vel Aliqua, Aliquod vel Aliquid; ex aliis & quis: τις ἔνιος, Τίπος. Somewhat, Something, Some Body, Some One, Aliquis, ut Græcis, τις, Capitur pro homine non obscurō. Ut fac ut me velis esse aliquem, Cic. i. e. non prorsus obscurum, Aliquos viginti dies. Plau. i. e. circiter viginti dies. Sic. Var. de re rust. Aliqua folia quinque. So also Dr. Thomas Holyoke, in that large Dictionary of his Printed at London, 1677. Aliquis, vel qui, quæ, vel, ⁶¹qua, quod, vel quid; Τίπος achad, τις ἔνιος. Some Body, Some One, Somewhat, Something. Aliquis ut Græcis τις, capitur pro homine non obscurō: ut; fac, ut me velis esse aliquam, Cic. i. e. non prorsus, obscurum. ¶ Aliquos viginti dies, Plaut. Menæc. i. e. circiter viginti dies, &c.*

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And so in *Thomas Thomasius*, and in other Dictionaries; so that Sir Peter did run himself into very many errors, by his mistaking of the aforesaid words, *cum aliqua muliere*: for *Glanvill* is so far, from proving the Law in his time to be different in the point of *Frank Marriage* from what it is now, that he proves the Law to be the very same then in that particular, that it is now; For he sayes, as appears before, *lib. 7. cap. 1.* that Lands may be given with any Woman whatsoever in *Maritagium*, which is yet true, for Lands may yet be given with any Woman whatsoever in Marriage liable to services, and *lib. 7. cap. 18.* when he tells us what *Liberum Maritagium* is, he sayes Lands may be so given

cum aliqua Muliere, with some Woman (*viz.* with one of the Kindred) which also is true at this very day.

[Page 62.] ⁶² And hereupon my Lord *Coke*, who knew the Law much better than Sir *Peter Leicester*, did in the first Part of his *Institutes*, or *Commentary upon Littleton*, fol. 21. b. (which is the very same side of the leaf where he tells us, that the Woman or Man that is the cause of the Gift in *Frank Marriage*, must be of the Blood of the Donor) cite in the Margent, *Glanvill lib. 7. cap. 1.* and *cap. 18.* which certainly he would never have done, if *Glanvill* instead of confirming, had directly contradicted what my Lord *Coke* had said.

7. Seventhly, It hath been objected by Sir *Peter Leicester*, that *Bracton* (who lived in the Reign of King *Henry the Third*, and was the second person who since the Conquest did write of our *English Laws*) doth say, that Lands might in his time be given in *Frank Marriage* with any Woman; and for that he citeth these words of *Bracton*, lib. 2. cap. 7. par. 3. *Et est maritagium aliquando liberum, scilicet ab omni servitio quietum; & aliquando servitio obligatum: liberum autem maritagium dicitur, ubi donator vult* ⁶³ *quod terra, sic data, quieta sit & libera ab omni seculari servitio, quod ad Dominum feodi possit pertinere, & ita quod ille, cui sic data fuerit, nullum omnino faciat inde servitium usque ad tertium haeredem.*

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And also these words of *Bracton*, lib. 2. cap. 7. par. 1. *Quoniam terra data Bastardo in maritagium, sicut & aliis, vel Bastardo per se, in se tacitam habet conditionem vel expressam de reverzione — &c.*

To which I answer, that those words of *Bracton*, lib. 2. cap. 7. par. 3. do only tell us what a Gift in *Frank Marriage* is, but there is not one word amongst those which Sir *Peter* doth there set down, which tells us with what kind of persons, such gifts are to be made. And those other words, lib. 2. cap. 7. par. 1. do only

prove, that Lands may be given *Bastardo in maritagium* (which they also may at this day) but there is not one word at all to prove, That Lands may be given to a Man *cum Bastarda*, whereas in this Case of *Frank Marriage*, the Party with whom the Land is given, not the Party to whom the Land is given, is the principal thing that is considerable herein. And though Sir Peter ⁶⁴ in the 11th Page of that Book of his, which he unjustly calls, *My Law-Cases Mistaken*, fayes that this Answer of mine is very *superficial and insufficient*; *For neither the Party to whom, nor the Party with whom, is here principally considerable, but the Party who is the principal cause of the Donation*; yet the contrary will appear by *Bracton's* own words, *lib. 2. cap. 7. par. 1.* which because Sir Peter cuts off too short, with an &c. I will here give you them more at large out of *Bracton* himself.

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QUONIAM terra data *Bastardo in maritagium*, sicut & aliis, vel *Bastardo per se*, in se tacitam habet conditionem vel expressam de reverzione: ideo videndum si terra data fuerit *Bastardo in maritagium cum aliqua muliere*, aut datur *ipfis & eorum hæredibus communibus*, aut *hæredibus ipsius uxoris tantum*, in primo casu revertetur ad donatorem, si defecerint *hæredes communes*, per modum tacitum donationis. Si autem fit *hæredibus uxoris*, tunc si *hæredes habuerit de Bastardo*, remanebit *eorum hæredibus communibus* terra, quia tales erunt *hæredes uxoris*, quamvis *communes*, si autem *communes defecerint*, tunc descendit terra sic ⁶⁵ data aliis *hæredibus ipsius uxoris de altero viro vel à latere venientibus*.

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From which words, it doth plainly appear, that in this case the Woman with whom the Land is given, is the principal thing that is considerable herein, and not the Bastard to whom the Land is given; For he here only tells us, that when Land is given *Bastardo in maritagium cum aliqua muliere*, that *aut datur ipfis & eorum hæredibus communibus, aut hæredibus ipsius uxoris tantum*; whereas if the Woman with whom the Land is given, had not been the principal thing, that is considerable in the said

Gift, he would have said, *Aut datur ipsis & eorum hæredibus communibus, aut hæredibus ipsis uxoris tantum, aut hæredibus ipsis Mariti tantum.* But he fayes not one word of the Land coming to the Heirs of the Husband alone, though he tells you it may come to the Heirs of the Wife alone, which doth fully prove that which I do here affirm, *viz.* That the Party with whom the Land is given, is the principal thing that is considerable, and that therefore though Lands may be given *in liberum maritatum Bastardo vel Bastarda*, yet they may ⁶⁶not be so given *cum Bastardo vel cum Bastarda*. Also *Bracton* is so far from proving that Land might have been given in his time in *Free Marriage* with any Woman whatsoever, that he proves, that such Gifts could only be made with a Woman who was of the blood of the Donor, his words, *lib. 2. cap. 7. par. 3.* are these; *Et sciendum quod terra datur aliquando ante sponsalia & propter nuptias à patre mulieris vel alio parente ipsi marito cum muliere aliqua vel utriusque simul, scilicet tali viro & uxori suæ (quod idem est) & eorum hæredibus vel alicui mulieri ad se maritandam, &c.* And presently after, *Fit etiam talis donatio ante Matrimonium contractum, aliquando in ipso contractu, aliquando post contractum.*

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Which is as much as to say, That this kind of Gift can only be made by the Father, Mother, or some other Kinsman, (For the word *Parens* or *Parent* in Latine and French, hath oftentimes that signification; and we usually say, when a Man is of the same kindred with such a one, that he is of the same Parentage with him) And though Sir *Peter Leicester* say in the ⁴⁷ page of the second of his ⁶⁷two Books, that *here is not one word to prove what I alledge it for; but rather the contrary: For a Father, or other Parent, may give Lands with any Woman in express terms, not to any of his Kindred only, no such word at all.* In this Sir *Peter* doth again mistake himself; For here he doth also falsly construe the words, *cum muliere aliqua*, with any Woman; whereas I have before proved, they are not Latine for with any Woman, but for with some Woman. And besides, *Bracton* here

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expressly speaks of a Gift made by the Father of the Woman, or some other Parent, (that is, some other Kinsman) and if the Donor was Father or Cousin to the Woman, the Woman must of necessity be either Daughter or Cousin to the Donor. Also my Lord *Coke in his Institutes upon Littleton*, Fol. 21. b. tells us, *That one of those things incident to a Frank Marriage is, that the Woman or Man that is the cause of the Gift, be of the blood of the Donor.* And for this, as appears letter (*i*) he in the margin, cites *Braclon*, lib. 2. cap. 7. (which is this very place.) And can any Man think, that my Lord *Coke* would have cited that place, and the aforesaid places in *Glanvill*, to have pro-⁶⁸ved that the Woman or Man who was the cause of the Gift, must be of the blood of the Donor, if *Glanvill* and *Braclon* in those places, had said that such Gifts might be made with those who were not of the blood: Also to what purpose should the Law have been changed by the Statute of *Westminster* the second, in this case of *Frank Marriage*, from what it was in ancient times, seeing since there were Estates in tail, there could be no great occasion to make Gifts in *Free Marriages*; and therefore my Lord *Coke* says in his first Part of *Institutes*, Fol. 178. b. *That such Gifts are almost grown out of use, and serve now principally for Moot Cases and Questions in the Law, that were thereupon wont to arise.*

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8. Eighthly, It hath been objected, That *Geva* was a base daughter of *Hugh Lopus*, and that she had Lands given her in *Frank Marriage*, as doth appear by this following Deed.

Ranulfus Comes Cestriae Willielmo Constabulario & Roberto Dapifero & omnibus Baronibus suis & hominibus Fran-⁶⁹cis & Anglicis totius Angliae salutem. Sciatis me dedisse & concessisse Gevæ Ridell filiæ Comitis Hughes Draytunam cum pertinentiis in libero conjugio, sicuti Comes Hughes ei in libero conjugio dedit & concessit. Et teneat bene & in pace, honorifice, & liberè, ut melius & liberius tenuit tempore Hugonis Comitis & aliorum meorum antecessorum eisdem consuetudinibus & libertati-

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bus. *Testibus Gilberto filio Ricardi, & Adelizâ sorore mea, & Willielmo Blundo, & Alejandro de Tresgor, & Rogero de Bellocampo, & Willielmo de Sais, & Roberto de Sais, & Ricardo filio Aluredi, & Hugone filio Osberti, & Henrico de Chalder: Apud Saintonam.*

To which I answer first, That there is no proof at all, that the said *Geva* was a Bastard ; And secondly, That the said Gift was not a Gift in *Frank Marriage*.

[Page 70.] First, I say, there is no proof that the said *Geva* was a Bastard, neither doth any Author either ancient or modern call her so, except Sir *Peter Leicester* alone. And she is by one very knowing person expresly said to be a legitimate Child. In-⁷⁰deed Sir *Peter* hath very often positively said, that *Ordericus* did say she was a Bastard, but in his *Second Reply*, (which is the sixth Treatise he did write concerning *Amicia*) after he had been many times told, that *Ordericus* had said no such thing, he is forced *page 3.* to confess, that *Ordericus* hath not these very words (*Geva is a Bastard*) but yet he pretends, that by sure consequence it follows out of the words of *Ordericus*, that she was a *Bastard*, which (he says) is all one to effect ; And to make this out, he cites *Ordericus lib. 4. Ecclesiastice Historiae*, Pag. 522. whose words are these, *E Pellicibus plurimam Sobolem utriusque sexus genuit, quæ diversis infortuniis absorbita penè tota periit: Ermentrudem filiam Hugonis de Claromonte Beluacensi uxorem duxit, ex quâ Ricardum Cestrensis Comitatus hæredem genuit, qui juvenis liberisque Carens naufragio periit.* But because those words do not prove that *Geva* was one of those *Bastards* which *Hugh Lupus* had, he doth not so very much insist upon them, as he doth upon what *Ordericus* doth write, *Lib. 10. Ecclesiast. Hist. pag. 787.* where *Ordericus* says thus, *Ricardus Pulcherrimus puer, quem solum ex Ermentrude ⁷¹filiâ Hugonis de Claromonte genuit, Consulatum (Cestriae scilicet) tenuit;* For he says that these words of *Ordericus* do put it out of doubt, that Earl *Hugh* only begot

Richard on *Ermentrude* his Wife, and says that then by sure consequence out of those words it must needs follow, that *Geva* was one of the Earl's *Bastards*, she being no Child by *Ermentrude* his Wife; But by those words, *Richardus autem pulcherrimus puer quem solum ex Ermentrude filia Hugonis de Claromonte genuit*; *Ordericus* might as well mean, that he was the onely Son which Earl *Hugh* had by *Ermentrude*, as that he was the onely Child that he had by her; For there is no necessity to take the word *solum* adverbially, neither is it marked as an Adverb in *Ordericus*'s Book, though it be so in Sir *Peter*'s, and yet in *Ordericus*'s Book, Adverbs are usually marked. And though Sir *Peter Leicester* alledge, that *Ordericus* doth not say *quem solum filium*, as I interpret him, but indefinitely, *quem solum ex Ermentrude genuit*; and so, whether *solum* be understood adverbially, or whether it be taken for a noun, no more can be made of it in *English* than thus, *Richard* a beautiful Youth, whom only Earl *Hugh* begot ⁷² on *Ermentrude*, &c. and so, whether we English it, whom only he begot, or whom he only begot, it retains the same sense, and shews that no other person, either Son or Daughter, was begotten on *Ermentrude* by Earl *Hugh*. I must take leave to dissent from him herein; For, I conceive this expression of *quem solum genuit*, doth amount to as much as if he had said *quem solum filium genuit*; which if it do, then (notwithstanding the said expression) Earl *Hugh* might possibly have a Daughter or Daughters by the said *Ermentrude*; For, to what Antecedent can the word *quem* so properly relate, as to the word *puer*? and if so, then *quem solum puerum*, is as much as *quem solum filium*, and so doth not exclude him from having a Daughter or Daughters by the said *Ermentrude*; For, though the word *puer* be by some understood to signifie a Child of either Sex, as Sir *Peter Leicester* also seems to take it in his *Historical Antiquities*, pag. 113. & 114. (But misprinted 121. & 122.) Yet Mr. *Gouldman* in his Dictionary will tell us that it is a mistake, where on the word *puer* he thus writes, *Nonnullis habetur communis generis, sed male, ex Ovidiano illo carmine, de Iphide puella in puerum mutata,*

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⁷³ *Dona puer solvit quæ fæmina voverat Iphis.*

And though Sir *Peter Leicester* says, that *Geva* could not be by any former Wife, because Earl *Hugh* had never any other Wife; yet that is more than either Sir *Peter Leicester* or I know; for there were many things done in those Ages which never came to our knowledges.

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Neither is there any force in what Sir *Peter* doth alledge, that probably if *Hugh Lupus* had any more Legitimate Children by his Wife besides Earl *Richard*, either Son or Daughter, that *Ordericus* would have recorded them as well as others, being indeed his usual method through the whole course of his History. For he could have no Legitimate Son but Earl *Richard*, unless he had another Wife besides *Ermentrude* (*Ordericus* being express therein) and possibly for some Reasons he might have another Wife besides *Ermentrude*: But whether *Geva* was by a first or second Wife, I know no necessity to conclude that *Ordericus* should Record her, I finding no such ⁷⁴usual method of his, as this which Sir *Peter* speaks of: For he doth not (that I see) make it his busines to Record what Wives or Children the Earls of *Chester*, and other great Men had, but onely speaks of them occasionally, and so he doth also of some of their Illegitimate Children; but if he made it his design to give an exact account of these things, he ought to reckon *Geva*, either amongst the Lawful, Doubtful, or Illegitimate Children of *Hugh Lupus*.

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And as to Sir *Peter's* Objection, That if *Geva* had been Legitimate, her Issue ought to have succeeded into the Earldom of *Chester*, rather than *Randle de Meschines* after the death of *Richard Earl of Chester*; That doth not necessarily follow, whethersoever *Geva* was a lawful Daughter of *Hugh Lupus* by a former Wife, or that she was his Daughter by his Wife *Ermentrude*: For if she was his Daughter by a former Wife, she would of ⁷⁵ but of the half Bloud to *Richard Earl of Chester*, and then

Randle de Meschines would be Heir before her ; But it seems to me, that *Randle de Meschines* was not the next Heir to Earl *Richard* ; for as ⁷⁵Mr. *Cambden* in his *Britannia*, in his Description of *Cheshire*, tells us, [which is also spoken of by Sir *Peter* in his *Historical Antiquities*, pag. 105.] King *William* commonly called *The Conqueror*, created *Hugh Lupus* Count Palatine of *Chester*, *Totumq; hunc comitatum tenendum sibi, & haeredibus ita libere ad Gladium : sicut ipse Rex tenebat Angliam ad coronam, dedit ; (haec enim sunt verba Donationis) qui statim sibi Barones substituit, &c.* so that this Earldom by the words of the said Grant, being not tied up to the Heirs Males of the Body of the said *Hugh Lupus*, nor to the Heirs of the Body of the said *Hugh*, but to his Heirs in general, if *Randle de Meschines* had been the next Heir to *Hugh Lupus*, the Earldom would have descended to the said *Randle*, but that it did not do ; for *James York* in his *Union of Honor*, pag. 105. says, That this *Randle* was made Earl by Grant of King *Henry the First*; and Sir *Peter Leicester* in his *Historical Antiquities*, pag. 118. (for which he cited *Ordericus*, a contemporary Author, pag. 876.) tells us, that the said *Randle* restored to King *Henry* all the Lands which he had by his Wife the Widow of *Roger 76 de Romara*, for the Earldom of *Chester* ; which he did not need to have done, if he had been the next Heir ; so that I cannot imagine any reason of this new Grant to *Randle de Meschines*, unless *Geva* was a Legitimate Daughter ; but if *Geva* was a Legitimate Daughter of *Hugh Lupus*, then there might a Case happen, which would make it necessary that whoever was Earl of *Chester*, must have a new Grant ; for if Earl *Richard*, when he died left two Sisters, viz. *Geva* and another Sister, the Earldom would be then at an end ; for as you may see in *Vincent's Correction of Brooke*, pag. 545. if an Earldom be conferred upon any person and his Heirs, if that person, or whoever else succeeds him doth die, leaving two or more Daughters, or two or more Sisters to be his Heirs, in this case the Earldom doth Escheate, and fall into the Kings hands, because it could not be divided ; for though Lands may, yet *Honor non potest*

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dividi; and how easily might *Geva* have a Sister, who might die young presently after the death of *Richard Earl of Chester*, without being taken notice of by our Authors, doth clearly appear by the former Precedents ⁷⁷in the like Cases; and if *Geva* and another Sister of hers were both living when Earl *Richard* died, the Earldom would extinguish, and being once extinguished, could not revive again, upon the death of the said *Geva's* Sister; And whereas it hath been objected by Sir *Peter Leicester* in the 39 page of his answer, That if *Geva* had been Legitimate, it is more than probable, she would have looked after the obtaining of so great an Inheritance, yea, and obtained it too before *Randle*; Nay had she been but of the half Blood, she would by all probability have buzzed hard for so great an Estate in those Ages, before she had lost it. In this Sir *Peter* was mistaken; for if she had been but of the half Blood, I have before proved that any Kinsman or Kinswoman, though never so remote, would have inherited Earl *Richard's* Lands before the said *Geva*; and if *Geva* was Legitimate and sole Daughter to *Hugh Lopus* by his Wife *Ermentrude*, and consequently only Sister of the whole Blood to Earl *Richard*, yet it doth not necessarily follow, that she would have had the Lands; for when *Randle Blundevill* died, ⁷⁸his Sisters of the whole Bloud, had not the Estate of the said *Randle*, but *John Scot*, eldest Son to *Maude* the eldest Sister of the said *Randle*, was Earl of *Chester*; and when the said *John Scot* died, leaving only Sisters to be his Heirs, none of the Husbands or Sons of any of the said Sisters of the said *John Scot*, was made Earl; and the said King *Henry III.* also laid that fair Inheritance unto the Domaine of the Crown, and assigned other Revenues elsewhere to the said Heirs.

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The words of Mr. *Cambden* in his *Britannia* in his Description of *Cheshire*, speaking of *John Scot*, are these, *Qui cum itidem nulla suscepta prole diem obiisset, Rex Henricus tertius tam lauto patrimonio, oculum adjiciens, Domano Regio adscriptis, Johannijsq; fororibus alios alibi redditus assignavit; Ne (ut ipse Rex dixit) tanta haereditas inter colos diduceretur;* And as the Sisters of

the said *Randle Blundevill* and the Sisters of the said *John Scot*, though they did not inherit the Earldom, had some other Lands given them, and were well provided for, so *Geva Sister of Earl Richard*, as you may see in Sir *William Dugdale's* first Part of the *Baronage of England*, pag. 34. b. ⁷⁹ had also Lands given unto her, and was married to *Geffrey Ridell*, who is there said to be an eminent Man in those days, *viz.* Justice of *England* under King *Henry the First*; and it is certain that when Earl *Richard* died, his Lands did not descend to the next Heir; for if *Geva* was his next Heir, she had them not; and if *Geva* was not his next Heir, then *Randle de Bricasard*, by some called *Randle de Micensis* or *Randle Meschines* was his next Heir, and though the said *Randle de Meschines* had the Lands of Earl *Richard*, Son of *Hugh Lupus*, yet they came not to him by descent; for as I have before shewed out of *Ordericus Vitalis*, and out of Sir *Peter Leicester's Historical Antiquities*, the said *Randle* restored to King *Henry the First*, all the Land which he had by his Wife, the Widow of *Roger de Romara* for the Earldom of *Chester*; and it is also plain that the said *Randle* did give Mony for the said Earl *Richard's* Lands; for it appears *Rot. Pip. de An. 5 Regis Steph. Rot. 12. M. i. Linc.* that in the said fifth year of King *Stephen*, *Ranulph Earl of Chester* (Son to the said *Randle de Meschines*) is certified to be indebted to the ⁸⁰ King in a thousand Pounds, *De debito patris sui, pro terra Hugonis Comitis.* So that here is no Proof at all, that the said *Geva* was an unlawful Child.

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But secondly, If there had been any Proof, that the said *Geva* had been a Bastard, yet it would have been nothing to the Case in hand, because the said Gift unto the said *Geva* was not a Gift in Frank-Marriage; if we peruse what my Lord *Coke upon Littleton* says, fol. 21. b. he will there tell us, that these words *In liberum Maritagium*, are such words of Art, and so necessarily required as they cannot be expressed by words equipollent or amounting to as much. As if a man give Lands to another with his Daughter *in Connubio soluto ab omni servitio*, &c. yet there

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passeth in this Case but an Estate for Life ; for seeing that these words *In liberum Maritagium* create an Estate of Inheritance against the general Rule of Law, the Law requireth that they should be legally pursued. And in this Deed to *Geva*, the words are not *in liberum Maritagium*, but *in libero Conjugio* ; and so are but like the words *in communio soluto ab om-⁸¹ ni servitio*, which make but an Estate for life, and so might be passed either to a Bastard, or any other person whatsoever. And if we look well on the Deed to *Geva*, it is worded as if it intended only an Estate for life, there being no mention of her Heirs, and running also in the Singular number, *Et teneat bene & in pace, &c. ut melius & liberius tenuit, &c.* Also if we observe my Lord *Coke upon Littleton*, a little before fol. 21. b. he will tell us, that four things are incident to a Frank-Marriage : The first whereof is, that it be given for consideration of Marriage, either to a Man with a Woman, or as some have held, to a Woman with a Man, (and with this *Braeton*, lib. 2. cap. 7. doth accord.) And the fourth thing is, that the Donees shall hold freely of the Donor, till the fourth Degree be past (with which the old Treatise, called *Fleta*, lib. 3. cap. 11. doth agree) for both which Reasons, this Gift cannot be a Gift in Frank-Marriage, because what is here given, is given to *Geva* alone, and not to an Husband with her ; there being here no Donees, but one Donee only, and the Estate was not to continue till the fourth ⁸²Degree was past, but was only an Estate intended for the life of *Geva*, as appears before ; whereas what was given by Earl *Hugh* to *Ralph Mainwaring* with his Daughter *Amicia*, and by *Ralph Mainwaring* to *Henry de Alditelegh* with his Daughter *Bertred*, was given in Free-Marriage, and their Heirs are mentioned in both the Deeds : It remains therefore clear, that the Deeds to *Geva* was not a Gift in Frank-Marriage, and is also very uncertain, whether *Geva* was a Bastard, as Sir *Peter* doth suppose.

And though I believe the *Basset*s did afterwards enjoy the same Lands, which in the aforesaid Deed were given to *Geva*,

because in *Monastricon Anglicanum*, Par. I. p. 439. and in Sir Peter Leicester's *Historical Antiquities*, p. 113. (but mis-printed 121.) I find *Geffrey Rydel* and *Ralph Basset* called the Heirs of the said *Geva*; as also that the said *Drayton* was called *Drayton Basset*, yet I do not know how or by vertue of what Deed, they did enjoy the same; for if these persons were the Heirs of her Body, and the aforesaid Deed a Gift in Frank-Marriage, why did not Earl *Randle* confirm or grant ⁸³those Lands to her Heirs, as well as to her; and if they were not the Heirs of her Body, she could not be a Bastard; for as my Lord *Coke on Littleton*, fol. 3. b. tells us, a Bastard can have no Heir but of his own Body.

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And whereas Sir Peter Leicester in the 45 page of his Answer to the *Defence of Amicia* says, that though my Lord *Coke* say that by those words *in connubio soluto ab omni servitio*, there passeth but an Estate for life, yet he saith not, that by those words *in libero conjugio*, or by the words *in libero connubio*, that there passeth onely an Estate for life; in this Sir Peter was also mistaken; for my Lord *Coke* positively says, that an Estate of Inheritance cannot be passed by a Gift in Free-Marriage by any other words but those very words *in liberum Maritagium*, and that no equipollent words or words amounting to as much will serve the turn, as you may see *Coke upon Littleton*, fol. 21. b. And in that very place, he tells us the reason thereof, is, because the words *in liberum Maritagium* create an Estate of Inheritance, against the general Rule of the Law, and therefore ⁸⁴the Law requireth that they should be legally pursued; and whereas S^r Peter also objects, that by this Rule, a Gift of Lands by the words in Frank-Marriage in an English Deed, and a Gift *de terres en Franke-Marriage*, in a French Deed, would be void Grants; in this Sir Peter did also mistake; for the Latin words *in liberum Maritagium*, and the English words *in Frank-Marriage*, and the French words *en Frank-Marriage*, are the very fame, although in different Languages; but the words *in libero*

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connubio, or *in libero conjugio*, or *in Maritacio soluto ab omni servitio*, or the French words, *en Nopſage acquite de services*, or the English words *in Wedlock free from all Services*, and all such other like, are but equipollent words, and an Estate of Inheritance will not pass thereby.

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And whereas the said Sir Peter being very desirous if he could to prove, that anciently Lands might be given in *Free Marriage* in other words than the words *in Liberum Maritagium* tells us in the second of his two Books, pag. 28. & 29. that *Dos* is called *Maritagium* in Doomsday Book; and for that end he cites ⁸⁵ *Coke upon Littleton*, fol. 31. And also sayes that *Dos* is called *Maritagium* by *Glanvill*, lib. 7. cap. 1. And also tells us of a Deed made in the time of King *John*, transcribed in one of the *Couchir Books* of the *Dutchy Office* in *Grays-Inne at London*, Tom. 2. *Honor sive socia de Bolingbroke*, num. 26. pag. 508. in which *Saher de Quency*, Earl of *Winchester*, gives to *Hawise*, Sister to the Earl of *Chester*, and Wife of *Robert*, Son of the said *Saher de Quency*, certain Lands *in liberum Donarium*; which word *Donarium*, Sir *Peter Leicester* sayes is misprinted for the word *Dotarium*, and thereupon sayes that the words *in liberum Dotarium* in that Deed, are the same with the words *in liberum Maritagium*; I shall therefore, before I answer the same, give you the words of the said Deed, as I find it in Sir *Peter's Historical Antiquities*, pag. 133.

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Sherus de Quency Comes Wintonie, omnibus Hominibus & Amicis suis, praesentibus & futuris, salutem. Sciatis, me concessisse & dedisse & praesenti Charta med confirmasse Roberto de Quency Filio meo ⁸⁶ & Hæredi ad dandum in liberum Donarium Hawisæ Sorori Comitis Cestriæ, Uxori ejusdem Roberti, Bucebeiam & Granteset, & Bradcham, & Herdewich, cum omnibus earundem terrarum pertinentiis, pro centum Libratis terræ: Et si hæ prædictæ terræ non valeant per annum centum Libras, Ego in aliis terris meis de propriâ Hæreditate med in Anglia, ei tantum

perficiam, quod plenariè habeat centum Libratas terræ per visum & considerationem legalium Militum hominum videlicet, Comitis Cestriæ & meorum. Et præterea dedi eidem Roberto Feoda duorum Militum, scilicet, Feodum Matthei Turpin in Winterlawa in Wiltsshire, pro servitio Feodi unius Militis, ad dandum simul cum terris nominatis prædictæ Hawifæ Uxori suæ in liberum Donarium. Testibus his, Comite Davide, Willielmo Comite de Ferrars, Philippo de Orreby, Roberto de Basingham, Ricardo de Lindescia, Willielmo de Grumpington, Henrico de Braibroc, Willielmo de Syelford, David Giffard, Willielmo Picot, Hugone & Thoma & Henrico Dispensariis, Waltero de Coventrey, Waltero Daivilla, & multis aliis.

⁸⁷ And now as you may see in the 29th page, of the 2^d of his two Books, he says, That in his *Historical Antiquities*, the word *Donarium* was there misprinted for the word *Dotarium*; whereas the word *Dotarium* is not in the said Copy which he cites, as a knowing Friend of mine doth inform me, who, at my request, did carefully examine the same in one of the *Couchir* Books in the *Dutchy Office* in *Grays-Inn*; but the word is *Donarium*, which probably the Transcriber did mistake for *Douarium*, the *u* and *n* being anciently written alike, and the *v* consonant not then used. But if the word had been *Dotarium*, it would not signify *Marriage*, as he doth fancy, although *Dos* in *Doomsday Book* be called *Maritagium*: For *Dos* is twofold, and that *Dos* which is *Dotarium*, is the same with *Douarium*, which we in English call *Dower*, and is not that *Dos* which sometimes is called *Maritagium*: For this see *Glanvil*, lib. 6. cap. 1. whose words are these, *Dos duobus modis dicitur, dos enim dicitur vulgariter, id quod aliquis liber homo dat sponsæ suæ ad ostium Ecclesiæ tempore desponsationis suæ, &c.* And lib. 7. cap. 1. *In alia enim acceptione, accipitur Dos secundum leges Romanas,* (which 3 last words, with some others, Sir Peter leaves out in the 8th page of the first of his two Books) *secundum quas proprie appellatur dos, id quod cum muliere datur viro, quod vulgariter*

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dicitur Maritagium; Now that *Dotarium*, is that *Dos* which is *Dower*, and not that *Dos* which is called *Maritagium*, you may see in Sir *Henry Spelman's Glossary*, Printed at *London* 1664 page 174. whose words are these :

¶ *De eo Dotis genere, quod uxoribus constituunt Angli.*

¶ *Doarium, Dodarium, Dotarium, Douarium, Dotalitium.] Omnia recte interpretatur vernaculum nostrum Douer, non Latinum dos. Est enim proprie dos, illud quod maritus accipit cum uxore haec vero id quod in remunerationem dotis, reportat uxor.*

And Sir *Peter* did very well know, that what is given in the aforesaid Deed, was only given as a Dower or Jointure, and not as a Gift in *Free Marriage*, as you may see in the 132 page of his *Historical Antiquities*, where he thus writes :

[Page 89.] 89 *Hawise*, fourth Daughter of Earl *Hugh by Bertred*, married *Robert Quency*, Son and Heir of *Saher de Quency*, Earl of *Winchester*. She had the Earldom of *Lincoln*, to wit, the Castle and Honor of *Bolingbroke*, and all the Lands of Earl *Randle* in *Lindsey* and *Holland* in *Lincolnshire*, for which she gave 50l. for Relief.

* Note. On *Hawise* was estated for *Jointure, *Bukby*, *Granteffet*, *Bradeham*, and *Herdwick*, as appears by this Deed in the Couchir Book of the *Dutchy Office*. Tom. 2. Honor five Soca de *Bolingbroke*; num. 26. pag. 508.

So that you see Sir *Peter* hath formerly confessed, that this Gift in *liberum Donarium*, was only a Jointure settled on the said *Hawise*; and it could not be a Gift in *liberum Maritagium*, because *Saher de Quincy* doth not give the Lands there mentioned, unto *Hawise* the Wife of his Son *Robert* (as Sir *Peter* says he did) but he gives them to his Son *Robert ad dandum Hawisæ uxori ejusdem Roberti*. And though a Man may settle Lands in Joynture upon his Wife, yet he cannot ⁹⁰give Lands unto her in Free-Marriage, for that would be to give Lands unto himself;

and whereas Sir *Peter* in the 26 and 27 pages of the second of his two Books, tells us, that the words *in liberum Maritagium*, in the more ancient Ages, were not by Law so strictly required, and sayes this is clear out of *Glanvil*, lib. 7. cap. 18. where he tells us, That a Grant of Land with any Woman *in Maritagio*, *Habendum prædictam terram sibi & hæredibus liberam & quietam ab omni servitio, à se & hæredibus suis, versus capitalem Dominum*; This was a good Grant *in libero Maritagio*, and was as good as if the words had been *in libero Maritagio*: and therefore the words of my Lord *Cook* touching *liberum Maritagium* reach not the age of *Glanvill*, so as alwayes then to be tyed up to those very words, and no other. Sir *Peter* therein fathers upon Mr. *Glanvill* what he never said or meant; for Mr. *Glanvill* doth not say that Lands might be given with a Woman in *Frank Marriage*, by other words than the words *in liberum Maritagium*; neither doth Sir *Peter* say right, when he affirms that Mr. *Glanvill* sayes, That a Grant of Land may be given with any Woman *in Maritagio*, ⁹¹*Habendum prædictam terram sibi & hæredibus liberam & quietam ab omni servitio, à se & hæredibus suis, versus capitalem Dominum*; For Mr. *Glanvill* only tells us, That *liberum dicitur Maritagium, quando aliquis liber homo aliquam partem terræ suæ dat cum aliquâ Muliere* (that is, not with any Woman, but with some Woman, viz. one of the Kindred) *alicui in Maritagium, ita quod ab omni servitio terra illa sit quieta, & à se & hæredibus suis, versus capitalem Dominum acquietanda: & in hac quidem libertate ita stabit terra illa usque ad tertium hæredem: nec interim tenebuntur hæredes inde facere aliquod homagium: Post tertium verò hæredem, ad debitum servitium terra ipsa revertetur; & homagium inde capietur.* All which hath been proved to be Law at this day, as well as it was in *Glanvil's* time.

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IX. Ninthly, It hath been objected by Sir *Peter*, that *Joan* the Wife of *Lhewellyn ap Forwerth*, Prince of *Northwales*, was base Daughter of *John King of England*, and that there are

several Precedents, that Lands were given to the said *Joan* in *Frank Marriage*.

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⁹² To which I Answere :

First, That it is not absolutely certain that the said *Joane* was a Bastard.

And seconde, That those Precedents which are alledged by Sir *Peter*, of Lands given in *Frank Marriage* to the said *Joanc* are not any of them Gifts in *Frank Marriage*, and therefore will not at all work any thing in the case in hand.

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I. First let us examine whether it be certain, that the said *Joane* was a Bastard or not; and in order thereunto, let us observe how many Wives the said King *John* had. First, he married *Alais* Daughter of the Earl of *Moriana*, in the year 1173. as we may read in *Brompton's Chronicon*, col. 1082. n. 35. *Hoveden* (*Frankfurt* Edition printed 1601.) pag. 532. n. 5. *Matt. Paris* (put out by Dr. *Watts*) pag. 127. n. 5. (which Editions of *Hoveden* and *Paris*, I do all along follow) and the like we may find in *Vincent upon Brooke*, pag. 133. who also there tells us, that by *Moriana* is not meant *Moreton*, but *Savoy*, with which ⁹³ *Matt. Par.* p. 751. n. 46. doth also accord; but the said *Alais* being then scarcely seven years of age, as we may see in *Matt. Par.* p. 127. n. 6. and dying presently after, the said King *John* could not possibly have any Issue by that Wife.

Soon after this, *viz.* in the year 1176. (as you may read in *Hoveden*, p. 553. n. 46. and *Matt. Paris*, p. 132. n. 29.) there was an Agreement for a Marriage to be had between the said *John* (then youngest Son of the said King *Henry II*) and a Daughter of *William* Earl of *Glocester*, Son of *Robert* Earl of *Glocester*; which said Daughter is not there named, but her name was *Ha-*

wifia or *Avis*, and the Marriage afterwards took effect, but he was divorced from her in the year 1200. as will anon appear.

Thirdly, Immediately upon his Divorce he married *Isabel* Daughter of the Earl of *Engolisme*, who was his last Wife ; for she survived him, and by her he had Issue (as will be agreed by all) *Henry* (afterwards King *Henry the Third*) *Richard* Earl of *Cornwal*, afterwards King ⁹⁴of the *Romans*) *Foane* Wife of *Alexander* the Second King of *Scots*, *Eleanor*, first married to *William Marshall* the younger, Earl of *Pembroke*, and afterwards to *Simon Mountford*, Earl of *Leicester*, as also *Isabel*, who was sixth Wife to *Frederick the Second*, Emperor of *Germany*.

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But King *John* marrying the said *Isabel* in the year 1200. could have no child by her old enough to be married to the said *Lhewellin* in the year 1204.

The only question then will be, whether *Lhewellins* Wife was King *John's* Legitimate Daughter by his Wife *Hawisia*, for that she must be if she was Legitimate ; and the Marriage between the said *John* and *Hawisia* being agreed on, in the year 1176, the said *Hawisia* might very well have a Daughter old enough to be married to the said *Lhewellin*, in the year 1204.

To prove that the said *Foane* Wife of *Lhewellin* was a Bastard, Sir *Peter Leicester* in the 101 page of that Book, which he calls the *Cafe of Amicia truly Stated*, ⁹⁵cites these feveral Authorities. *Vincent upon Brook*, p. 204. *Speed's History*, p. 518. *Stow's Annals Augmented by How's*, p. 167, 168. *Policronicon Translated into English by Trevisa*, lib. 7. cap. 33. *Cambden's Britannia in Shropshire*, p. 453. also *Daniel and Fabian*, and *Mill's Catalogue of Honour*, and Sir *Richard Baker's History*, who do all call her Base Daughter of King *John*; and no Author at all calls her lawful Daughter, or reckoneth her among the Daughters of any

[Page 95.]

of his Wives: some of them say she was begot by King *John* on *Agatha de Ferrars*.

To which I answer first, that I believe it doth not yet certainly appear, by any Deed, Record, or Contemporary Author, that the said *Joane* was a Bastard, and by consequence, there is no absolute proof that she was Illegitimate; for the Author of the *Polycronicon* is the first of those Authors which Sir *Peter* doth mention, or I have taken notice of, who doth call the said *Joane* a Bastard, and the said Author of the *Polycronicon* (as *Vossius* tells us in his Book, *de Historicis Latinis*, pag. 487.) dyed in the year 1363. which ⁹⁶ was 159 years after the said *Llewellyn* married the said *Joane*. But all those Records, Deeds, and ancient Authors, which I have seen do call her Daughter onely, without any Brand of Bastardy at all; For this, see the Copy of King *John's* Precept to the Sheriff of *Shropshire*, to make Livery of the said Lordship of *Ellesmere*.

Ex. Rot. Claudio de anno sexto Regis Johannis (in arce Lond.) membrana 7.

RE X Vicecom. Salop. Salutem. Scias quod dedimus dilecto filio nostro Lewellino manerium de Ellesmere, cum omnibus pertinentiis suis, in Maritagio filiae nostrae, Et ideo, &c. Teste, &c. apud Wigorn. 23 Martii. So also.

Claus. 2. H. 3. M. 1.

MAndatum est Vic. War. quod plenam scismam habere faciat Leolino Principi Norwall. de Villa de Budiford cum pertinentiis suis quam Dominus Johannes Rex pater Domini Henrici Regis dedit ei in Maritagium cum Johanna sorore Henrici Regis uxore ipsius Leulini. Test. *Comite apud Westm. 10. Oct.

* Scilicet Willielmo Marescallo Comite Pembrochiae tunc Rectore Regis & Regni.

So also.

⁹⁷ *Ex Rotulo Chartarum de anno sexto Regis Johannis, numero 32.* [Page 97.]

*Charta Lewellini
Principis Wallieæ.*

*Johannes Dei gratia, &c. Sciatis, nos dedisse, concessisse, & hac
Charta nostra confirmasse, Lewellino Principi Northwallieæ, in
Maritagium cum Johanna filia nostra Castrum de Ellesmara cum
omnibus pertinentiis suis :*

So also *Matt. Paris*, who was contemporary with the said *Joane*, p. 231. n. 52. calls her the *Kings daughter*, without the addition of *Bastard*, or any thing tending thereto ; his words are these, *Quo facto, venit aliis nuncius ex parte filie ejusdem Regis uxoris videlicet Leolini Regis Wallieæ, &c.* Also in the Reign of King *Henry III.* her Son *David* is by him (p. 537. 569. and in many other places) styled *Nepos Regis*, and p. 695. called *Nepos Regis ex Sorore*; and p. 570. he is said to be *propinquus Regi consanguinitate*.

⁹⁸ Also *Knighton*, col. 2417. n. 42. thus sayes of her, *Rex Johannes dedit filiam suam Leolino Principi Wallieæ in uxorem, & cum ea dedit castellum & totum territorium de Ellesmere in confinio Wallieæ.* And the King himself in the aforesaid Record gives her the title of *filie nostræ*. [Page 98.]

Also in *lib. Barlings* (in which Book, besides what concerns the Abby of *Barlings* in *Lincolnshire*, there are certain Annals (beginning *An. 1050.* and ending *An. 1231.*) she is called the said Kings daughter, without the addition of *Bastard*; there being these words onely in the said Book in Sir *John Cotton's Library*,

which do concern the said *Joane*, viz. *Lewelinus disponfavit filiam Regis I.*

So alfo *Vaughan* in his *British Antiquities*, (as he is cited by Sir *Peter Leicester*, in the first of his two Books, pag. 28. & 29.) gives us out of an old Manuscript these very words :

[Page 99.] 99 **L** *Ewellinus Gervasi filius Princeps Wallie, primò despontavit Tanglyyst, filiam Lhowarch Vychan de qua genuit Grifith & Gwladus ddu, quondam uxorem Radulphi de Mortuo mari: Post mortem dictæ Tanglyyst, idem Lewelynus despontavit Johannam, filiam Johannis Regis Angliae, de qua genuit David, principem; & Guelliant uxorem Johannis Lacy Comitis Lincolnie, & Angharad primo despontatam Johanni de Brewis Domino de Brechon; post cuius deceßum, despontata fuit Malgoni Vachan ap Maelgon ap Rees, & ex eadem uxore genuit filiam que maritata est Johanni Scoto, Comiti Cestrie, qui fuit nepos Ranulphi Comitis Cestrie ex parte sororis suæ.*

So that we see in all these Records, Deeds and old Authors, there is not one word tending to prove that the said *Joane* was an illegitimate Child.

Also our later Authors, as *Vincent* and others, who say that she was Illegitimate, do many of them say, That King *John* was divorced from his second Wife, as well for that she was barren,

[Page 100.] as within ¹⁰⁰the degrees of Consanguinity ; which barrenness, if it could be made to appear, would certainly prove the said *Joane* to be a *Bastard*; And this opinion hath so far prevailed in this last Age, that whereas learned Mr. *Cambden*, as we may see in his *Britannia* in Latine printed at *London* 1607. p. 259. speaking of the divorce of the said *Hawisa* (whose name he mistakes, and calls *Isabel*) doth only use these words, *illam repudiatam*, Doctor *Philemon Holland* in the English Translation (unjustly) renders

it thus, That King *John* did repudiate her upon pretences, as well that she was barren, as that they were within the prohibited degrees of Consanguinity. But our ancient Historians say nothing of her being barren. For this see *Hoveden* (who was living all the time that *Hawisia* was Wife to King *John*) p. 803. n. 34. in the year 1200.

Eodem Anno factum est divortium inter Johannem Regem Angliae & Hawisam uxorem suam filiam Willielmi Comitis Gloucestræ per Heliam Burdegalensem Archiepiscopum, & per Willemum Piclavensem, & per Henricum Sanclonensem Episcopos: erant enim affines in tertio ¹⁰¹gradu consanguinitatis. Facto itaque [Page 101.] Divortio inter Johannem Regem Angliae, & uxorem suam, ipse Rex Angliae consilio Domini sui Philippi Regis Franciae duxit sibi in uxorem Isabellam Ailmari Comitis de Engolismo, &c.

So also *Matt. Paris* (living in the time of the said *Joane*) p. 200. n. 23. in the said year 1200.

Eodem tempore celebrato Divortio inter Regem Anglorum & uxorem suam Hawisam Comitis Gloverniae filiam; eo quod affines erant in tertio gradu consanguinitatis; Duxit idem Rex, consilio Regis Francorum Isabellam Comitis Engolismi.

So also *Mat. Westminster* in that Edition printed at London, 1570. lib. 2. p. 76. n. 25.

Anno gratiæ. M. CC. Rex Johannes Isabellam Comitis Engolismi duxit in uxorem, & dominica proxima ante festum sancti Dyonisi consecrata est in Reginam ab Huberto Cantuariensi Archiepiscopo, quia celebratum fuit divortium inter ipsum & Hawisam, Comitis Gloverniae filiam¹⁰², eò quod contingebant se [Page 102.] in tertio consanguinitatus gradu.

See also the words of *Rad. de Diceto*, (who lived in the time of the said King *John*) col. 706. n. 5. which words are these:

Celebratum est divorcium inter Johannem Regem Anglie & filiam Comitis Glocestriae in Normannia, ab Episcopis Lisorensi, Baiocensi, Abrincensi, & aliis Episcopis qui interfuerant, quam ipse tempore patris permissione Romanæ Ecclesie duxerat in uxorem cum Comitatibus de Glocestria, de Sumersatum, de Deveneſire, de Cornwaille, & aliis quamplurimis per Angliam honoribus. Set ille sublimioris thori spe raptatus, confilio pravorum eam abegit, unde magnam summi Pontificis, scilicet Innocentii tertii, & totius curiae Romanae indignationem incurrit, præsumens temere contra leges & canones dissolvere quod eorum fuerat auctoritate colligatum.

See also *Lipſius* in his *Monita & exempla politica*, printed at [Page 103.] *Amſterdam* 1630. p. 220. who there tells us, that *sterilitas* ¹⁰³ *sola eft cauſa diuortii, quoties apud principes valuit*, and then judge if she had been barren, whether that would not have been alledged as a cause of King *Johns* putting her away, as well as his desire of matching into a more sublime Family; And (which is very observable, all thoſe Authors which Sir *Peter Leicester* cites in the ſaid 101 Page, or who I have met with, who do either ſay that King *Johns* ſaid Wife was barren, or do call the ſaid *Joane* the Wife of the ſaid *Lhewellin a Bastard*, do not any one of them (except Sir *Richard Baker*) know the true Christian Name of the ſaid divorced Wife of the ſaid King *John*, but are either ſilent therein, or elſe (which almost all of them do) do call her *Isabell* instead of *Hawifia*; and how are thoſe persons like to know whether ſhe had Iſſue or not, ſeeing they did not ſo much as know her true Christian Name? Also Mr. *Vincent* in his corrections upon *Brooke*, pag. 204. cites a Deed of which Sir *Peter Leicester* in his Advertisement to the Reader, pag. 60. gives us these words, and no more.

¹⁰⁴ *Chartæ 14. Hen. 3. membrana 5.*

[Page 104.]

Pro Roberto de Audley.

Henricus Rex salutem. Inspeximus Chartam Richardi de Landa in hæc verba.

Sciant præsentes & futuri, quod ego Richardus de Landa dedi & concessi & hac præsenti Charta mea confirmavi Roberto de Audley & hæredibus suis in liberum maritagium cum Johanna filia mea centum & tres solidatas & quatuor denaratas terræ cum Pertinentiis in Insula Scapeya. Hiis Testibus, &c.

But Sir Peter Leicester omits a great part of the said Deed, and amongst the rest these words, *Sicut carta Regis Johannis quam inde habeo rationabiliter Testatur*, which words do shew that King John gave those said Lands to the said Richard de Landa.

¹⁰⁵ Now though this Deed doth prove that *Joane* the Wife of ^[Page 105.] *Robert de Audley* was by the Law of *England*, the Daughter of *Richard de Landa*, yet Mr. *Vincent* in the said 204 page of his *Corrections upon Brooke*, (being that very page in which he cites the said Deed) tells us that this *Joane*, the Wife of *Robert de Audley*, was really the Base Daughter of King *John*, begotten on his Paramour *Agatha* the Daughter to *William de Ferrars*, the second Earl *Ferrars* of that Christian Name, as he says shall be more largely discovered in the Life of King *John*; which if so, the said *Agatha* was then the Wife of the said *Richard de Landa*. And that Kings did sometime beget Children on the Bodies of other Mens Wives, which yet were owned as the base Children of the said Kings is not without Precedent; for (to instance in no more) you may find in Sir *Richard Baker's Chronicle*, printed at *London*, 1665. pag. 66. That King *Henry the Second*, by his famous Concubine the Wife of *Ralph Blewet*, a

Knight, had a Son named *Morgan*, who was Provost of *Beverley*, and being to be elected Bishop of *Durham*, went to *Rome* for [Page 106.] a ¹⁰⁶ Dispensation, because being a Bastard, he was else uncapable: But the Pope refusing to grant it, unless he would pass as the Son of *Blewet*, he absolutely answered, he would for no cause in the World deny his Father, and chose rather to lose the Dignity of the Place, than of his Bloud, as being the Son, though but the base Son of a King. But the said Mr. *Vincent* mistakes this *Foane*, Wife of *Robert de Audley*, to be the same *Foane* who was Wife of *Lhewellin* Prince of *Wales*; for he says that after the death of *Lhewellin*, she was re-married to *Robert de Audley*, which cannot be, because as appears before, *Lhewellin* was Husband to his Wife *Foane* in the year 1204. and as you may find in the *Welsh History*, put out by Dr. *Powell*, pag. 293. The said *Foane* Daughter to King *John*, and Princess of *Wales*, died in the Spring, 1237. and was buried upon the Sea-shoar, within the Isle of *Anglesey*, at *Lhanvaes*, as her pleasure was, where the Prince did build a House of *Bare-foot Fryers*, over her Grave; But the said *Lhewellin*, as you may see in the said *Welsh History*, pag. 298. and in Sir *Peter Leicester's Historical Antiquities*, pag. 47. ¹⁰⁷ and in *Matt. Paris*, put out by Dr. *Watts*, pag. 525. died *tertio Idus Aprilis, scilicet die sancti Guthlaci, Anno Christi, 1240.* so that he outlived his said Wife *Foane* three years; and therefore the said *Foane de Audley* could not be that *Foane* who was Wife of the said *Lhewellin*, but must of necessity be another *Foane*. And why might not other Writers mistake this *Foane* Wife of *Robert de Audley*, to be the same *Foane* who was Wife of *Lhewellin*, as well as Mr. *Vincent* did; and thereupon call *Foane* the Wife of *Lhewellin* a Bastard. But though Mr. *Vincent* do here promise to discover more fully in the Life of King *John*, that *Foane* the Wife of *Robert de Audley* was the Daughter of King *John*, by the said *Agatha de Ferrars*, yet because the said Mr. *Vincent* did not (that I can find) live to write the Life of the said King *John*, so that I cannot learn what Arguments he would have brought for the further discovery of what he did undertake;

I will therefore for the present wave the same, and not conclude that she was Legitimate, although she might be so, for any thing that doth yet to the contrary appear.

¹⁰⁸ Secondly, Sir Peter Leicester objects that *Lhewellin* gave [Page 108.] with *Hellen* his Daughter unto *John Scot*, Earl of *Chester*, the Mannor of *Budeford* in *Warwickshire*, and the Mannor of *Suttehel* in *Worcestershire*, *In libero Maritagio cum omnibus pertinentiis sicut Dominus Johannes Rex ea illi dedit in libero Maritagio*, and therefore says, that nothing can be more clear than that the Gift of *Budeford* and *Suttehel* with the said *Joane* Wife of *Lhewellin*, was an express Gift in Frank-Marriage. And for the proving of this, he gives us this Agreement or Deed, which he supposeth to be made about *Anno Domini 1222. 6 H. 3.*

HÆc est conventio facta inter Dominum Ranulfum Comitem Cestriæ & Lincolniæ, & Dominum Lhewellinum Principem Northwalliæ; Quod Johannes de Scotiâ, nepos prædicti Comitis de sorore suâ primogenita, ducet in uxorem Helenam filiam ipsius Lhewellini: ita quod dictus Lhewellinus dabit dicto Johanni in libero Maritagio totum manerium de Budeford in Warewicâ, & manerium de Suttehele in ¹⁰⁹ Comitatu Wigorniæ cum omnibus pertinentiis, sicut Dominus Johannes rex ea illi dedit in libero maritagio: Et totum manerium de Welneton in Comitatu Salopesburiæ cum omnibus pertinentiis infra villam & extrâ. Habendum dicto Johanni, & hæredibus suis ex dictâ Helend provenientibus, sicut idem Lhewellinus ea aliquo tempore melius & integrius tenuit. Et preterea dabit eidem Johanni mille marcas Argenti, &c. Testibus Domino Reverendo Episcopo de sancto Asaph, Domino H. Abbatte Cestriæ, Domino Hugone de Lasci Comite Ultoniæ, Phillipo de Orreby tunc Justiciario Cestriæ, H. de Aldideley, Gualtero de Davill, Ricardo Fitton, Edrevet Liaghama, Edmundo filio Righerit. Coronon filio Edrevet, Helin Idhit, Magistro Estruit, Magistro Addâ, Davide Clerico Lhewellini, Magistro H. & —— Clericis Domini Comitis Cestriæ & multis aliis.

[Page 110.] To which I answer, that as it is not certain that the said *Foane* was a Bastard, so this Deed is only an Agreement, in the nature of Articles betwixt *Randle Earl of Chester*, and *Lincolne* on the one part, and *Lhewellin Prince of North-Wales* on ¹¹⁰the other part; concerning an intended Marriage betwixt the said *John* and *Hellen*, for they were not then married, as appears by the said Articles or Deed; and the said *Lhewellin* doth not thereby give to the said *John Scot, Budeford* and *Suttehel*, but only Covenants that he will give them unto him, as appears by the word *Dabit*, which is the future Tense; and it is very likely that the said *Budeford* and *Suttehel* were given to the said *Lhewellin*, in *Maritagio*, without the word *libero*, as will be proved by these Records.

Claus. 2. H. 3. M. 1.

MAndatum est Vic. War. quod plenam scisinam habere faciat Leolino Principi Norwall. de villa de Budeford cum pertinentiis suis quam Dominus Johannes rex pater Domini Henrici Regis dedit ei in Maritagium cum Johanna sorore Henrici Regis uxore ipsius Leulini. Test. (*) Comite apud Westm. 10. octo.

[Page 111.] ¹¹¹Rot. Pip. de ann. 2 H. 3. Warr. & Leic.

Willielmus de Cantilupo Philippus de Kinton pro eo reddit comp. de cxxviii l. ii s. bl. de firma de Warwick: & de quater viginti & quinque libris xvi s. ivi d. bl. firma de Leicestershire.

— Et Leuelino Principi Norwall: lxxvi s. in Budiford in Maritagio cum Johanna uxore sua, de dimidio anno per Breve Regis.

And as there are in these Records the words *in Maritagio*, without the word *libero*, so also there was *livery* made of the same Lands, which in a Gift in Frank-Marriage is needless to be done;

(*) Scilicet Willielmo Mareſcallo Comite Pembrochiae tunc Reſto Regis & Regni.

but be it how it will, there can be no Argument drawn from this Deed or Agreement betwixt Earl *Randle* and *Lhewellin*; for it is very apparent, that he who did write the said Deed or Agreement was a very ignorant Person, and did not at all understand what a Gift in Frank-Marriage was; for if King *John* gave *Budeford* and *Suttehel* to the said *Lhewellin* with his Daughter *Joane*, in *Maritagio*, without the word *libero*, then the said *Lhewellin*, ^[Page 112.] might give them to *John Scot*, with his Daughter *Hellen*, in whatsoever manner he did please; but if King *John* gave the said Mannors of *Budeford* and *Suttehel* to *Lhewellin* with his Daughter *Joane*, in *libero Maritagio*, then the said *Lhewellin* could not give away from his Son *David* (who out-liv'd the said *Lhewellin*) the said Mannors of *Budeford* and *Suttehel*, to *John Scot*, with his Daughter *Hellen*; for though he who hath Lands given to him in Marriage liable to Services, hath the Inheritance of the said Lands, and may dispose of them as he doth please; yet he who hath lands given to him in Frank Marriage hath not the inheritance of the said lands, but hath only *Custodiam cum uxore*, and therefore cannot dispose of the same; and yet this ignorant person, who did write the said Agreement or Deed, doth suppose that King *John* gave *Budeford* and *Suttehel* in Frank-Marriage to *Lhewellin*, and that the said *Lhewellin* might give them in Frank-Marriage to the said *John Scot*.

Neither can it be objected, that the Law hath been changed in this Point, or otherways holden from what it is now; ^[Page 113.] for I will shew that the Law was the same in this particular, and also so holden after the time of the said *Lhewellin*, in the time of the said *Lhewellin*, and before the time of the said *Lhewellin*, and that I do thus prove;

If you look in my Lord *Coke upon Littleton*, fol. 22. a. you will find that the Husband in the time of King *Edward III.* was so far from having the inheritance of Lands given to him in Frank Marriage, that if he and his Wife were divorced, the Woman

should enjoy the whole Land ; and for this he cites in the Margent, 13 Edw. 3. tit. Aſs. 19 Edw. 3. Aſs. 83. with several other proofs of the like nature ;

Also in the time of King Edward I. as you may see in the ancient Treatise called *Fleta*, (which was written in that Kings time) the inheritance in these cases of Frank Marriage was in the Wife with whom the Land was given, and not in

* Note. the Husband, but it was *Secus otherways, when Lands were given in Marriage *pro Homagio & servitio viri*,

[Page 114.] as you may see ¹¹⁴ in the third Book and 11th Chapter, *de Donationibus in Maritagiis*, where it is thus said, *Et quamvis fiat mentio in donatione, quod terra data sit in Maritagium tali viro, cum tali uxore, res data tamen est liberum tenementum uxorius, & non viri, cum non habeat nisi custodiam cum uxore, donec liberum tenementum fibi accrescat, per legem Angliae: Secus**

* Note. *si pro homagio & servitio viri, & in Maritagium facta fuerit donatio.* And so also the Law doth continue until this day.

Also in the 9 H. 3. (which is but three years from that year in which Sir Peter Leicester doth suppose the said Deed, or Agreement, betwixt the said Randle Earl of Chester, and the said Lhewellin to be made) the inheritance of thos Lands which were given to a Man with a Woman in Frank Marriage, was in the Wife, and not in the Husband ; for my Lord Coke on Littleton, fol. 21. b. tells us, That if the King give Land to a Man with a Woman of his Kindred in Frank Marriage, and the Woman dyeth without Issue, the Man in the Kings case shall

[Page 115.] not hold it for his life, because the Woman ¹¹⁵ was the cause of the gift, but otherways it is in the case of a common person, and for this in the margent he cites 9 H. 3. Dower. 202. so that it seems, though a Man might be Tenant by the courtesie of England of Lands given to him by a Subject in Frank Marriage with his Wife, yet where the King did so give the Lands, if the

Woman after she had Issue did dye, and her Issue all dye before her, the Husband in that case would not be Tenant by the courtesie of *England*, or enjoy the Lands for his life, so far was he from then having the Inheritance of the said Lands.

So also *Braeton* (who was the second that did write of our *English Laws*, and was living in the time of King *Henry III.* and in the time of the said *Lhewellin*) lib. 2. cap. 11. thus sayes :

Si autem fiat mentio quod terra data sit in Maritagium cum uxore & eorum hæredibus, communes hæredes de corpore utriusque admittantur, qui si defecerint, revertitur terra data, & alii remotores excluduntur: quia res data est liberum tenementum uxoris, & non viri, cum non habeat nisi¹¹⁶ custodiā cum uxore. Si [Page 116.] autem sic terra detur in Maritagium viro cum uxore, & eorum hæredibus, pro homagio & servitio viri (quod fit aliquando) licet detur in liberum Maritagium, que sunt sibi ad invicem adversaria sive repugnantia, tunc prefertur homagium, & erit acsi fieret donatio tam viro quam uxori.

And that the *Maritagium* which *Braeton* here first speaks of was *Maritagium Liberum*, is very apparent, because we see here, he immediately after speaks of Lands given in Marriage not free, viz. of Lands given in *Maritagium, pro homagio & servitio viri*; so also Mr. *Glanvil*, who lived before the time of the said *Lhewellin*, viz. in the time of King *Henry II.* and was the first that did write of our *English Laws*, lib. 7. cap. 18. after he hath told us what Free Marriage is, hath these words :

Cum quis itaque terram aliquam cum uxore sua in Maritagium ceperit, si ex eadem uxore sua hæredem habuerit filium, vel filiam clamantem & auditum infra quatuor parietes, si idem vir uxorem suam supervixerit, sive vixerit hæres sive non, illi in vita¹¹⁷ sua [Page 117.] remanet Maritagium illud, post mortem vero ipsius ad donatorem vel ejus hæredes est reversurum. Sin autem ex uxore sua nunquam

habuerit hæredem, tunc statim post mortem uxoris ad donatorem vel hæredes ejus revertetur Maritagium. Et hæc est quædam causa quare de Maritagio tali non solet recipi homagium. Si enim sic donata esset terra aliqua in Maritagium, vel alio modo, quod inde reciperetur homagium, tunc nunquam de cetero ad donatorem, vel ejus hæredes licite possit reverti ut supradictum est.

So that Mr. *Glanvil* also here tells us, that the Husband hath not the Inheritance of such Lands as are given to him in Frank Marriage with his Wife, for where Lands are given in Marriage, for which *homage* is not to be done, if the Husband have Issue by his Wife, whether that Issue live or dye, the Husband shall (by the courtesie of *England*) hold those Lands for his life; but if he never have Issue, then thofe Lands upon the death of the Wife shall revert to the Donor, or his Heirs, so far was the Husband from having the Inheritance thereof; but on the other hand we see, that ^[Page 118.] Mr. *Glanvil* tells us, that if Land be given in such Marriage, for which *homage* is done, that the Husband hath the inheritance of the said Lands, and may dispose of them as he doth please, because such Lands can never revert to the Donor or his Heirs, as Lands given in Frank Marriage may do; so that hereby the gross ignorance of him, that did write that Deed or Agreement betwixt the said Earl *Randle*, and the said *Llewellyn*, doth sufficiently appear, and there can be no Argument brought from their covenanting to do a thing, which could not possibly be done.

And here because Sir *Peter Leicester* fayes, that the words in *Maritagio* were oftentimes in old Deeds taken for the words in *Libero Maritagio*, I think it convenient to prove, that whensover Lands are given by Deed, with these words in *Maritagio*, without any other word joined therewith, that such Lands were given in Marriage liable to services; for although *Maritagium* be twofold viz. *Maritagium Liberum & Maritagium servitio obnoxium*, as I have long since in the 39 and 40 pages of my reply

to Sir Peter's ¹¹⁹ answer to my Defence of *Amicia*, proved both [Page 119.] out of Mr. Glanvil, and other Authors, yet when the word *Maritagium* is used alone in a Deed, and Lands are passed by Deed to a Man with a Woman *in Maritagio*, without either the word *Libero*, or the words *Servitio obnoxio*, in this case the word *Maritagium* cannot be the *Genus*, and comprehend both *Maritagium Liberum*, and *Maritagium Servitio obnoxium*; for it is impossible that a Man should at one and the same time, hold the very same Lands of the same person, in Frank Marriage, and in Marriage liable to services; the only question therefore is, when a Man gives Lands with any one *in Maritagio* only, without either the word *libero*, or the words *servitio obnoxio*, what construction the Law will make of such a Deed; and whether it shall be a Gift in Frank Marriage, or a Gift in Marriage liable to services?

Now that such a Deed shall be construed in Law to be a gift liable to services will thus appear;

First, Because if such a Deed be made with the words *in Maritagio* only, and ¹²⁰ no other word be expressed in the said Deed [Page 120.] to declare that it should be a Gift in Frank Marriage, it is impossible that those Lands should be held free from all services; For if, as my Lord *Coke upon Littleton* tells us, *fol. 21 b.* these words *in Liberum Maritagium* are such words of art, and so necessarily required (in a Gift in Frank Marriage) as they cannot be expres'd by words equipollent, or amounting to as much; How can it be that *Lands* given *in Maritagio*, can be held free from services, when there are no equipollent words, nor any expression at all, to shew that the Donor intended that the said Lands should be held free from services?

Secondly, Because *Maritagium servitio obnoxium*, is the elder Brother to *Maritagium Liberum*; For when Lands are given *in Maritagio servitio obnoxio*, such Gifts are agreeable to the Common Law of *England*, but when they are given *in Liberum*

[Page 121.] *Maritagium*, as we may see in *Coke upon Littleton*, fol. 21 b. they create an estate of inheritance against the general Rule of the Law; and therefore though this younger Son be connived at, and ¹²¹tolerated, yet, as we may there see, the Law requireth that such Gifts be legally pursued, and that is the reason why such Gifts cannot be made to any but those of the blood, as also why the words *in Liberum Maritagium*, are such words of Art, and so necessarily required, as that they cannot be expressed by words equipollent, or amounting to as much.

Also our Common Lawyers have a Rule (as we may see *Coke upon Littleton*, fol. 189. a.) that *Additio probat minoritatem*; and thereupon it is that my Lord *Coke* there tells us, that the younger Son giveth the difference; and pursuant to this Rule, when a Gift is made in *Maritagio*, which is intended to be liable to services, (that being the elder Brother) they use the word *Maritagio* in the Deed, and no more; but when it is given in Free Marriage, (which is the younger Brother) according as my Lord *Coke* tells us, the word *Liberum* (which is the difference) is absolutely necessary: and herewith agrees the common practice; For I never saw in all my life, where Lands were given *in Maritagio*, liable to services, that the words *in Maritagio servitio* ¹²²*obnoxio*, were used in any of the said Deeds, but only the words *in Maritagio*; and if they did intend that any other services should be done, over and above those services which the Law did create by the words *in Maritagio*, then, they did afterwards in the said Deeds mention those other services, but else not.

So also the word *Fædum*, or *Fee* is twosould, viz. *Fædum simplex*, and *Fædum tale*, and yet in this case, like unto the other, *Fee-simple* being the elder Brother to *Fee-tail*, (all inheritances being in *Fee-simple* before the statute of *Westminster* 2. cap. 1. as *Littleton* tells us, lib. 1. cap. 2. sect. 13.) if it be said in any Booke, that a man is feised in *Fee*, without more saying, it shall be in-

tended in *Fee-simple*; For it shall not be intended by these words (*in Fee*) that a Man is seised in *Fee-tail*, unless there be added to it this addition *Fee-tail* as we may see in *Littleton*, lib. 3. cap. 4. sect. 293. and according to this Rule, our Common Lawyers do all of them constantly use the like expressions at this day.

¹²³ So also in Blazoning Coats of Armes, and particularly to [Page 123.] instance in my own; Because the plain Barre is the elder Brother to all other Barres, it shall not be said, that I bear Argent two plain Barres Gules, but only that I beare Argent two Barres Gules, and yet the word *Fædum* is as much the *Genus* to *Fee-simple* and *Fee-tail*, and the word Barre as much the *Genus* to a plain Barre, a Barre engrailed, a Barre Nebule, and all other sorts of Barres, as the word *Maritagium* is the *Genus* to *Maritagium Liberum*, and *Maritagium servitio obnoxium*. And as the words in *Fædo* alone without the word *simplici* joined with them, shall signifie in *Fæ-simple*; and as the word Barre alone shall in Blazoning be understood to be a plain Barre and not any other sort of Barre whatsoever, so the words *in Maritagio* in a Deed, if no other word be joined therewith, shall in Law be construed to be in Marriage liable to services.

And this doth shew that Sir *Peter Leicester* was mistaken, when in the 20 and 21 pages of the first of his two Books, he charged me with saying, that *Maritagium* ¹²⁴ *est duplex, vel Maritagium, vel liberum Maritagium*; For I never said or thought any such thing, but when I did divide *Maritagium*, I did divide it into *Maritagium liberum*, and *Maritagium servitio obnoxium*, as you may see in the 39 and 40 pages of my Reply; and I have here made it to appear, that when Lands are given *in Maritagio*, without any other word added thereto, they are then given in Marriage liable to services; but the saying so doth not distinguish *Maritagium*, into *Maritagium*, and *Maritagium liberum*, as Sir *Peter* did thereupon say that I did.

3. Thirdly, Sir Peter Leicester in his Advertisement to the Reader, gives us this Record, in these following words.

[Page 125.]

¹²⁵ *Ex Rotulo Chartarum de anno sexto Regis Johannis, numero 32.*

Charta Lewelini

Principis Walliae.

Johannes Dei gratia, &c. Sciatis, nos dedisse, concessisse, & hac Charta nostra confirmasse, Lewelino Principi Northwallie, in Maritagium cum Johanna filia nostra Castrum de Ellesmara cum omnibus pertinentiis suis: Tenendum ei & hæredibus suis qui de eo & prædicta filia nostra exierint, de nobis & hæredibus nostris in liberum Maritagium, salvis Conventionibus inter nos & ipsum de terra & eodem Maritagio factis: Et nos & hæredes nostri prædictum castrum cum pertinentiis suis ei, & prædictis hæredibus suis, Warrantizabimus contra omnes qui in eo jus clamare voluerint: Quare volumus, &c. quod prædictus Lewelinus & prædicti hæredes sui habeant & teneant prædictum castrum de Ellesmara cum omnibus pertinentiis suis, bene & in pace, libere & quiete, integre, in bosco & plano, in pratis & pascuis, in viis & semitis, in aquis & molendinis, in Stagnis ¹²⁶ & vivariis, in moris & marciscis, & Piscariis, & in omnibus aliis locis & rebus, cum omnibus libertatibus & liberis Consuetudinibus ad illud Castrum pertinentibus, sicut prædictum est. Testibus Domino Henrico Cantuarensi Archiepiscopo, G. filio P. Comite Essexie Willielmo Comite Sarum, Johanne de Cursy: Datum per manum H. de Wellen. Archidiaconi Wellensis à apud Dovorum, 16 die Aprilis, anno, &c. 6.

[Page 126.]

*Convenit cum Recendo, Gulielmus
Ryley Deputatus Algar. May
Militis, Februario, 1674.*

By which Record Sir *Peter Leicester* fayes it plainly appears, that this Grant to *Lewellin* with *Joane* Daughter of King *John*, was a Grant *in liberum Maritagium* (in exprefs words) of the Castle of *Ellesmere* in *Shropshire*, dated the 16 day of *April*, in the sixth year of the Reign of King *John*, which falleth in the year after the Incarnation of Christ, 1204.

1. To which I answer, First, That it doth not plainly appear, as hath before been shewed, that the said *Joane*, Wife of *Lhewellin*, was a Bastard; and in this ve-¹²⁷ry Record, (as she is in [Page 127.] all the rest) she is called the Kings Daughter, without the least blemish of Bastardy at all.

2. Secondly, It is manifest by a Record herein before by me mentioned, that Livery was made of *Ellesmere* unto *Lhewellin* by the Sheriff of *Shropshire*, about the 6th year of King *John*; and as Livery doth not need to be made upon a legal gift in Frank Marriage, so on the other hand my Lord *Coke on Littleton*, fol. 21. b. tells us, that if Lands be given in Frank Marriage with one that is not of the blood of the Donor; yet an Estate for life will pass, if Livery be made; and we may find both by the Welsh History put out by Dr. *Powell*, pag. 306. and *Matt. Paris* put out by Dr. *Watts*, pag. 625, & 626. that the next year after the death of the said *Lhewellin*, the said *Ellesmere* was in the hands of King *Henry the III.* and it appears by good Record, that it was afterwards committed by him to the trust of *Hamon le Strange*; so that such a Grant, and such an enjoyment as this was, might have been, if the said *Joane* had been certainly a Bastard, and therefore cannot have any relation to ¹²⁸this Case [Page 128.] of *Amicia* at all. And whereas Sir *Peter* hath heretofore objected, that if this had been but an Estate for life, it would have reverted to the King upon the death of *Joane*, who dyed four years before her Husband *Lhewellin*, in that he is clearly mistaken, because the Grant and Livery were both of them made

to *Lhewellin* himself; And whereas he also would have it, that *Ellesmere* did not of right belong to King *Henry* the III. and thereupon in the first of his two Books, taking notice of the Articles betwixt King *Henry* the III. and *David* Prince of *North Wales*, doth ask this question, What needed this Covenant from *David* of *Ellesmere*, if it were the right of King *Henry* before that Agreement made? Sir *Peter* if he had so pleased, might easily have discerned that there was the same Covenant and Grant from the said *David*, concerning some Lands of *Roger de Montefalio* Steward of *Chester*, and of some other Barons, &c. of the right and title to which lands there could be no doubt.

3. But Thirdly, What disputes soever might have arisen about [Page 129.] this Grant, ¹²⁹if it had been made by a common person, because the granting part thereof is in *Maritagium*, without any other word, but the *Tenendum* is in *liberum Maritagium*; yet there being a difference betwixt the Kings case, and the case of a common person, this Grant was certainly a void grant, and by consequence is of no force or weight at all as to the matter in hand; for as we may read in the case of *Tenures* put out by Baron *Barry*, and Printed at *Dublin* 1637. pag. 48. in the Grants of a common person, the Rule of Law is, that the Grant shall be taken most strongly against the Grantor; But in the King's Grants the Rule is, that they shall be taken most beneficially for the King, and most strongly against the *Patentees*. Also in the same 48. page, there is another Rule, that the Grant of the King shall not be extended to pass any thing contrary to the intent of the King expressed in his Grant; and if the Grant cannot take effect, according to his intent expressed in his Grant, the Grant is void. And accordingly in the 49. and 50 pages there are these cases put, where the Grants would have been ¹³⁰good in the Cases of common persons, but not in the Case of the King.

In the Lord *Lovell*'s Case, 18 H. 8. B. Pat. 104. The King *ex certa scientia, & mero motu*, grants Lands to one and his Heirs-

males; If a common person had made such a Grant, the Law would say, that the word Males were void, and the *Fee simple* should pass; But will the Law make such construction in the Kings Grant? No; There the Grant shall be void, for, he was deceived in his Grant, in that it cannot take effect according to his intent expressed in his Letters Patents. 29 *Eliz.* in the *Exchequer*, the Case was, King *Hen. 7.* was seized of two Mannors, *scilicet de Ryton & Condor;* He Grants *ex certa scientia & mero motu totum illud Manerium de Ryton & Condor;* Adjudged that the Grant was void.

The like Case was resolved, 39. *Eliz.* where the Queen was seized of the Mannors of *Milborne*, and *Saperton* in the County of *Lincoln*, and the Queen grants *ex certa scientia & mero motu totum illud Manerium de Milborne cum Saperton in* ^[Page 131.] *com. Linc.* and it was held, that neither of the Mannors did pass; and yet if a common person had made such Grants, the Grantee in both the said Cases should have had both the said Mannors.

By which said Rules and Cases it also appears, that this Grant of *Elefmer &c.* to *Lhewellin* was a void Grant, and by consequence of no force at all; For that the King was deceived in his Grant, when he made the *tenendum in liberum Maritagium*, is very plain, as well because the King grants the said Castle and Lands in *Maritagium* only, (which by Law implies Marriage liable to services) as also, because it appears by those words in the Grant, *Salvis conventionibus inter nos & ipsum de *terra & eodem maritago factis*, that the King intended to have money paid, or service done to him, for the said Castle and Lands, and by consequence they were not to be held *in liberum Maritagium.*

So that all the objections against my first Argument, though so very numerous, are fully answered, and wholly removed out of the way, and by necessary ^[Page 132.] consequence it appears, that *Amicia* was *Hugh Ceviliok's* legitimate Child.

* Note.

Against my second Argument, Sir *Peter Leicester* in the 52 page of his Answer to my defence of *Amicia*, doth object, That although Sir *Ralph Mainwaring* was witness to very many Deeds of the then Earls of *Chester*, and was also much convervant with them, as appears by those many circumstances which I have therein taken notice of; yet this was occasioned by his place, he being Judge, and that *Philip de Orreby*, who was Judge of *Chester* next after the said *Ralph*, was also a witness to the like Multitudes of Charters or more.

To which I answer, that although *Philip de Orreby* was Justice of *Chester* above twenty years, yet I beleive it cannot be proved that the said *Philip* was witness to near so many Charters of the Earls of *Chester*, as the said *Ralph* was; And which shews that the familiarity betwixt the said Earls, and the said *Ralph*, was not upon that account which Sir *Peter* speaks of, we find as [Page 133.] before appears that the said *Ralph*, was a witness to ¹³³*Hugh Civilok's* Deeds of confirmation to the Priory of *Calc* in *Darbyshire*, and was with *Randle Blundevil* at *Coventry*, and a witness to his Charter to the Burgeses there, which could not be occasioned, by his being Judge.

And as to my third Argument Sir *Peter Leicester* gives this only Answer, as we may see in the 53 page of his Answer to my defence of *Amicia*, that indeed Precedents are scant; but some there be: what do you think of *Ranulpho de Astbury nepote Comitis Cestriae*; who is put the last of all the Witnesses in the Deed, as you may see in the *Addenda* of my Book? Certainly he was but an ordinary Gentleman, nor Knight, nor Lord: But you will say, I cannot prove him a Bastard; yet I should be glad to find out his Extraction, if he were not: 'tis a shrewd presumption.

So that Sir *Peter* doth in effect confess, that he hath no such Precedent at all, and indeed this precedent will fail him for two reasons.

First Because Sir *Peter* doth as good ¹³⁴as confess, that he [Page 134.] cannot prove him to be a Bastard, (and he might perhaps be a younger Brother or son of a younger Brother, and so not necessarily a Knight or a Lord.)

And Secondly; Because he doth not call himself the Earl's Nephew, but is called so by others; and that is so far from contradicting, that it doth confirm what I said in my former Book.

And whereas Sir *Peter Leicester* says, he should be glad to find out the Extraction of the said *Randle de Astbury*, if he were not a Bastard. Though it be perhaps impossible now to tell him his Extraction certainly, because he lived so long since, and we only find him mentioned as a witnes in one Deed, yet I doubt not but to satisfie the Reader, that he and his Father and Mother might all be legitimate; For, (not to say that he might be a son of some other Daughter of the said *Hugh Civillock* by his former wife) he might possibly be the Son of *Roger*, Son of *Hugh Civillock*; and I know no reason why the said *Roger* should by Sir *Peter* be suspected to be a Bastard, for he only ¹³⁴finds him (as [Page 135.] appears by his *Historical Antiquities*, pag. 134) mentioned as a witnes to a Deed of his Brother *Randle's*, to the Abby of St. *Werburge*: So that he conceives him to be a Bastard, because neither he, nor any Issue Male of his, succeeded in the Earldom of *Chester*, after the death of *Randle Blundevil*; whereas the said *Roger* might be lawful, and be Father to this *Randle de Astbury*, and yet both he and the said *Randle de Astbury* might dye before the said *Randle de Blundevil*; For he lived very long, and was Earl of *Chester* above 50 years: so that this third Argument of mine is not answered at all.

And whereas I have in my 4th Argument, shewed out of Sir *Henry Spelman's* Glossary on the word *Bastardus*, how the said Sir *Henry* quotes *Coustum. du Normand. Artic. 77. in Annot.* thus: *Quoties enim agitur de honore vel commodo filiorum, appell-*

latione filiorum non comprehenduntur Bastardi: And have from thence argued, that *Amice* would not have been stiled *filia*, as she is in the said Deed, unless she had been a legitimate Child; [Page 136.] Sir *Peter* in the 63^d page of his Answer to my ¹³⁶ Defence of *Amicia*, doth object against this in these very words.

And what you add out of *Spelman*, is little to the purpose; that in Cases of Honour and Profit, distinction was then made; that by the Appellation of Sons, Bastards are not comprehended by the Customs of *Normandy*: What then? this supposeth that in other Cases, and formerly by the Appellation of Sons, Bastards were comprehended: This makes directly against you, and you know what *Spelman* saith in the very words next following — That the ancient Northern people admitted Bastards to succeed in their Inheritance; and that *William* the Conqueror was not ashamed of that title, who began his Letter to *Alan*, Earl of *Little Britain*, (as he did many others) *Ego Willielmus cognomento Bastardus*. But what is all this to the answering of the Argument, or proving *Hugh Cyveliok* to have had a former Wife? only you would have the words *in libero Maritagio*, to prove *Amice* absolutely legitimate: this is all the Answer you give to the Point; and this will not do it, as is before proved, whither I have referred the ingenious Reader.

[Page 137.] ¹³⁷ To which I answer, First, that though Sir *Peter Leicester* doth here say, that this (which I here cite) supposeth that in other Cases, and formerly by the Appellation of Sons, Bastards were comprehended: And that this makes directly against me; yet he is very much deceived in so saying: For if in other Cases by the Appellation of Sons, Bastards were comprehended, but were not comprehended by that Appellation in Cases of Profit; it will from hence appear that *Amicia* was legitimate, because she was called *Filia* in a Case, that did concern her Profit, and by consequence her Father must have a former Wife. And whereas he tells us, out of the next words of *Spelman*, viz. that

the ancient Northern People admitted Bastards to succeed in their Inheritance; and that *William* the Conqueror was not ashamed of that Title, who began his Letter to *Alan*, Earl of *Little Britain*, as he did many others, *Ego Willielmus cognomento Bastardus.*

I do not know how Sir *Peter* can apply those expressions to the Case in hand, and if he could, they would make against him; For, when Bastard Children were so much esteemed, as [Page 138.] to be admitted to succeed in the inheritance, then certainly illegitimate Daughters were very near of equal repute with those that were legitimate. And by this Rule, why should not *Amicia*, if she was a Bastard, be so called, as well as *Paganus* was? (who as Sir *Peter* says, was the son of *Hugh Civiliock*) or why should *Hugh Civiliock* himself, be more ashamed to call her so, than *William* the Conqueror was to stile himself a Bastard.

But these Cases of Princes differ much from those of Subjects; For Sir *Richard Baker* in his *Chronicle* printed at *London*, 1665. page 22. in the Life and Reign of King *William* the Conquerour, tells us, that in those days it was not unfrequent, for Princes to confer their Principalities after their own deceases, upon whom they pleased, counting it as lawful to appoint successors after them, as substitutes under them; And he also observes how in our time, and Kingdom, the Duke of *Northumberland* prevailed with King *Edward* the sixth, to exclude his two Sisters, *Mary* and *Elizabeth*, and to appoint the Lady *Jane Grey*, Daughter of [Page 139.] the Duke of *Suffolk*, to succeed him: so that Precedents brought from Princes, will in this Case be of no force at all.

And whereas I have shewed in my 5th Argument, that although the Constable of *Cheshire* (who had that Office in Fee) was by Charter to go next to the Earl of *Chester*; And the *Dapifer*, *Seneschal* or *Steward* of *Cheshire*, (who also had that Office in Fee, was to go next to the said *Constable*, that yet the said *Ralph Mainwaring*, notwithstanding the said Charters, is

not only named as a Witness before the said *Constable, Seneschal,* and other Barons, in those Deeds which I have there mentioned, but that also the Earl of *Chester* himself in his Charter, (contrary to all other Precedents in the times of other Justices which I have seen) doth name the Justice of *Chester* before both the *Constable of Cheshire, and Steward of Cheshire.* And that I did suppose, that the reason why the said *Ralph* had that great respect, was, because he had married a lawful Child of the said Earl, it being too great to have been shewed him, if he had only married one who¹⁴⁰ was a Bastard ; and that it will be very difficult to give any other reason thereof : Sir *Peter Leicester* in the 77th page of his Answer to my Defence of *Amicia*, doth only give this Answer in these very words.

[Page 140.]

To this I say, it will not be difficult at all to give a reason, and much more easie, than to give a reason, why *Amice* should be no Bastard, because Sir *Raufe Manwaring* is sometime subscribed before the Barons of *Cheshire*. The reason I give is this, that anciently in those Ages, the Justice was put sometimes before the Barons, and sometimes after ; and sometimes after the *Constable, and Dapifer*, and before the rest of the Barons, as it hapned : For proof, see the Deed in my Book, making the Baron of *Halton*, the prime Baron, pag. 160. where the Justice comes after all the Barons ; also in the Deed of Earl *Randle* to his Barons, pag. 162. where the Justice comes next after the *Constable and Dapifer*, and before the other Barons ; see also in my Book, pag. 130, 131. two Deeds made by *Hugh Cyveliok* : In the one, the Justice is put after the *Constable and Dapifer* : In the other, the Justice is put before them ; many other like examples may be produced elsewhere : I will appeal herein to Mr. *Dugdale*, or to any Antiquary in *England* ; and considering the great uncertainty of subscription of Witnesses in old Deeds, sometimes putting one before another, in one Deed, and again putting the same person after the other in another Deed ; sometimes putting *Domino* prefixed before the names of some persons in one Deed, and omitting the word *Domino* before the names of the same persons

[Page 141.]

in another Deed, whereof I have spoken, *pag. 5, 6.* in the beginning of this Book. I say, had you well considered or observed these things, it was not worth your labor to have added those three or four leafs in the close of your Book.

To which I reply, That what Sir *Peter* sayes in the *77, 78, and 79 pages* of his said Answer, is so far from answering that Argument of mine, which is contained between the *69, and 75 pages* of my first Book, that that which Sir *Peter* pretends to be an Answer, (if rightly understood) is the very Argument which I there frame against him ; For, though what he sayes, *pag. 78.* be true, that ^[Page 142.] sometimes the *Justice* is put after the *Constable* and *Dapifer*, and sometimes before the *Constable* and *Dapifer*, yet all the *Justices of Chester*, except Sir *Ralph Mainwaring*, are named in the Charts of the Earls of *Chester*, after the *Constable* and *Dapifer*, and are also named after the *Constable* and *Dapifer*, when they were witnesses to any Deeds ; But it is only in the time of the said Sir *Ralph Manwaring*, when the *Justice* is named before the *Constable* and *Dapifer* in the Charts of the said Earls, and it is only he who is named as a Witness, and that frequently before the *Constable* and *Dapifer* as I have proved by several Deeds, which I then mentioned both out of Sir *Peters* former Book, and elsewhere, and doth also further appear, by another Deed in his *Historical Antiquities*, *pag. 205.* where the said Sir *Ralph Mainwaring* is also named as a witness before the then *Dapifer, Ralph de Montealto* ; and this respect was shewed to the said Sir *Ralph Mainwaring*, although, as we may see in his said Book, *pag. 160. & 161.* that the *Constable* by Charter was to go next the Earl, and had his Office in Fee, and that the Steward ^[Page 143.] was to go next after the Constable, and had his Office also in Fee.

But when *Phillip Orreby*, who did succeed the said Sir *Ralph Manwaring*, was Justice of *Chester*, then, according to the old usual way, as appears in the *162. page* of Sir *Peters* first Book,

the *Constable* and *Dapifer* were again named in the Earls Chart before the Justice of *Chester*, and also as we may see at the bottom of the 144 page and top of the 145 page of his said Book, the said *Constable* was named as a Witness before *Phillip de Orreby*, though then Justice of *Chester*; and I beleive Sir *Peter* cannot shew any Chart of any of the Earls of *Chester*, in which any other Justice of *Chester* had the like preeminence; neither do I think he can shew any Deeds, in which any other Justice is named as a witness before the *Constable* or *Dapifer*; and if any such single Precedent can perchance be found, I am confident it will prove to be a Deed wherein the said *Philip de Orreby* is named as a witness, and was occasioned by the simplicity of the Clark, who did write the said Deed, who finding Sir *Ralph Mainwa-*¹⁴⁴*ring* Justice of *Chester* (the immediate Predecessor of the said *Philip de Orreby*) to be written as a witness before the *Constable* and *Dapifer*, might thereupon think that *Philip de Orreby* should also be so placed, though it was not allowed to the said *Philip*.

[Page 144.]

And although Sir *Peter* truly objects, p. 78. how great the uncertainty of subscription of witnesses was in old Deeds, sometimes putting one before another in one Deed, and after putting the same person after the other in another Deed; yet, that will be nothing in this Case, for Sir *Peter* himself confesses, pag. 160. & 161. of his *Historical Antiquities*; notwithstanding the uncertainty of subscription of Witnesses, that after certain Offices were annexed to certain Barons, that the matter was without controverse (as to the *Constable* and *Dapifer*) and that the *Constable of Cheshire* in Fee carried it clear by his Office, which was annexed to his Barony, and that the *Steward* was the next after him.

[Page 145.] And therefore this Preeminence being thus given to the said Sir *Ralph*, and to ¹⁴⁵him only; and he also, so far as I have found, being ever named before all the other Barons of *Cheshire*, after he had married the said *Amicia*, as well when he had parted

with his Office of Justice, as before ; I think I may still say, it will be difficult to give a reason thereof, if he did not marry a lawful Daughter of the aforesaid Earl.

6. Sixthly, My last Argument to prove *Amicia* lawful, was raised, from the vast disproportion of years, that was betwixt *Hugh Cyveliok*, and his Wife *Bertred*, it not being at all probable, that so great a person as Earl *Hugh* was, shouold continue unmarried, without having a former Wife until the said *Bertred* became marriageable. And this I formerly proved by three reasongs.

First, By shewing how Earl *Hugh* did join with his Mother *Matilda*, in giving by Deed *Stivinghale*, and other things, to *Walter Durdent* Bishop of *Chester*, and his Successors, to which Deed *Eustace* the Constable was a Witness, and I having there proved out of Sir *Peter Leicester's Historical Antiquities*, that the said *Eu-¹⁴⁶stace* was slain in the year 1157. (in which year the [Page 146.] said *Bertred* was born) it would from thence follow, that if that Deed was sealed immediately before the said *Eustace* was slain, yet the said *Hugh* must needs be at the least 21 years older than his Wife *Bertred*.

Secondly, I have shewed out of *Caradocus Lhancaruenfis* (whom I have proved to be an Author of good credit, and to be living at that time) that the said *Hugh* in the year 1142. fortified his Castle of *Cymaron* and *wan Melyenith* to himself; and if the said *Hugh* was but 12 years of age at that time, yet he would be about 41 years old when he married the said *Bertred*.

And Thirdly, I have mentioned a Deed which is in Sir *Peter Leicester's Historical Antiquities*, which the said *Hugh* when he was Earl, made to the Nuns of *Bolington*, in which is this expression, *Sicut fuit tempore Henrici Regis*; by which it appears, that the said Deed was made in the time of King *Steven*: For

[Page 147.] the said *Hugh*, as Sir *Peter Leicester* tells us, came to be Earl in the year 1153. 18. of King ¹⁴⁷*Steven*, and dyed *Anno Domini* 1181. 27 H. 2. But in the time of King *Henry* the second, it could not be made; for then Earl *Hugh* would have said, *Sicut fuit tempore Henrici primi*, or else he would have used some other words to distinguish King *Henry* the first, from the then King *Henry* the second. And if it was made in the time of King *Steven*, he dying in the year 1154. which was three years before the said *Bertred* was born, if the said Deed was made immediately before King *Steven* dyed, yet Earl *Hugh* would be at least 24 years older than *Bertred* his Wife.

Against every of these three reasons, Sir *Peter Leicester* doth object, and as to the first he tells us, how *Richard* Earl of *Chester* joined with his Mother *Ermentrude* in the Grant of *Wadmundesley*, *Anno Domini* 1106. when he was scarce twelve years old, and so would have the *Cafe* of *Stivinghale*, to be like that of *Wadmundesley*, and therefore will suppose Earl *Hugh*, when he made the Deed of *Stivinghale* to be then but about 12 years old also, because his Mother then joined with him. But in my An-

[Page 148.] *swer to Sir Pe-¹⁴⁸ter's two Books, pag. 41, 42, 43, 44, 45, & 46.* I

have shewed out of the Book of *Abington*, that that

* Note. Deed of *Wadmundesley* was sealed with the *Seal of the Earls Mother only, and not with the Earls Seal at all, and that it was taken notice of as a strange *Cafe*, and other very material differences, I have there observed besides, to which, for brevity sake, I shall refer the Reader at this time.

And whereas he hath objected against my second reason, that *Caradocus Lhancaruan* is not to be believed, because he says King *Steven* took *Geffrey Mandevyle* Prisoner at *St. Albans* in the year 1142. whereas *Matt. Paris* in that Edition put out by Dr. *Wats*, pag. 79. says it was *William Mandevyle*; if you look in *Henry of Huntington*, who lived in the time of the said King *Steven*, pag. 393. lin. 15. And in the History of *Simeon Dunel-*

mensis, (who also lived in the time of the said King Steven, and whose History was continued for about 25 years, by John Prior of *Hagulstid* or *Hexam*) Col. 273. lin. 15. And in *Roger Hoveden* (who lived in the times of King Henry the II. ¹⁴⁹ King Richard [Page 149] the I. and King John) in his Annals printed at *Francfurt*, 1601. pag. 488. l. 41. And in *Gulielmus Nubrigenis*, who lived in the times of King Richard the I. and King John, lib. 1. cap. 11. And in *Ralph de Diceto*, who was Dean of *Pauls* in King John's time, in his *Abbrev. Chronic.* Col. 508. l. 32. And in *Gervasius a Benedictine Monk of Canterbury*, (who lived in the time of King John) Col. 1360. lin. 7. And in *John Bromton's Chronicon*, which ends with the death of King Richard the I. Col. 1033. lin. 1. you will there find, that according to what *Caradocus Lhancaruenis* says, his name was *Geffrey*, and not *William Mandevyle*. And if Sir Peter had but lookt in *Mat. Paris* on the other side of the leaf, pag. 80. l. 20. he would have found *Mat. Paris* also calling him *Geffrey Mandevyle*, so that the calling of him *William* in the former leaf, was either a slip of the Printer, or of *Mat. Paris*'s Pen. Neither is that second Objection which Sir Peter makes against this second reason, of any force: For whereas it is misprinted, *Hugh Earl of Chester*, instead of *Hugh Son to the Earl of Chester*, as appears by the amendment of the *Errata*, at the end of ¹⁵⁰the said Book, Sir Peter Leicester [Page 150.] of his own Authority, without naming any Author to justifie what he says, tells us, that it should have been printed *Randle Earl of Chester*, and not *Hugh Son to the Earl of Chester*; but I will appeal to the Reader, who is most like to know, how it was in *Caradocus Lhancaruenis's Welsh Manuscript*, whether Sir Peter, who never saw it, or Dr. Powel, who translated the same into *English* out of *Welsh*. And whereas Sir Peter Leicester in the 39 and 40 pages of his second Reply, objects against my third reason, and says, that in the said Deed to the Nuns of *Bolington*, the not adding the words of *Henrici Regis nunc*, shews clearly it is meant of *Hen. I.* In that he says very true, for the words *ficut fuit tempore Regis Henrici*, do certainly relate to King *Henry*

the first's time, because when this Deed was made, there had been no other King *Henry*; but it shews clearly, that this Deed was made in King *Steven's* time; for if it had been made in King *Henry* the second's time, it would have said, *sicut fuit tempore Regis Henrici primi*, or else it would have used some other expression, to distinguish King *Henry* the I. from King *Henry*

[Page 151.] the II.¹⁵¹ the then King. And if that Deed was made in King *Steven's* time, then my said Argument is still in force; for King *Steven* dyed three years before *Bertred* was born. And I think I may securely say, it will be hard for any one to shew me the like expression to that of *sicut fuit tempore Henrici Regis*, in any Deed, that he can make appear was made by a Subject in the time of King *Henry* the II. or any other later King *Henry*, or in the time of any other King in the like Case.

But besides these Objections against my said three reasons, Sir *Peter Leicester* knowing very well, (according to what he did once acknowledge in the 49 page of his Answer to my Defence of *Amicia*) that if there was any great number of years betwixt the age of *Hugh Cyveliok*, and his Wife *Bertred*, a man might then reasonably suppose, that the said Earl had a former Wife, doth labor very much to prove, there was no great difference of age betwixt them, and to that purpose he gives us this Record.

[Page 152.]

152 Scaccarium apud Westminster.

*In Rotulo de Dominabus Pueris, & Puellis, de anno 31 Hen. 2.
in Custodia Rememoratoris Regis existente, continetur (inter alia) ut sequitur, &c.*

Com. Lincoln.

Balteslawe Wapentak.

Matilda Comitissa Cestriæ est de donatione Domini Regis: & fuit filia Roberti Comitis Glocestriæ filii Regis Henrici primi, & est Lannorum, & amplius: Hujus Villæ recepit Comi-

tiffa his VIII. annis : Ipsa tenet Wadinton in dote de feodo Comitis Cestriæ : & firma est XXII. libr. per annum : dicta villa valet per annum XL. lib. cum hoc instauramento, scilicet, II. Carucis, IIII. Vaccis, I. Tauro, IIII. suibus, I. verre, D. ovibus, quæ ibi sunt — &c.

153 *Com. Lincoln.*

[Page 153.]

Zeretre Wapentak.

*Bertrea Comitissa, filia Comitis de Evereous, uxor Hugonis Comitis Cestriæ, est de donatione Domini Regis; & est xxix. annorum Terra quam Comitissa habet, xl. lib. *Maritagum ; & defectus sunt ultra mare, ideo nesciunt Juratores quid valeant. Dominus Rex præcepit, quod ipsa haberet xl. libratas terræ Domini sui in Beltesford, Hemmingly, & Duninton : licet non habuit nisi xxxv. libratas, & x. solidatas. Quia (ut dicunt) dicta terra non potest plus valere cum Instauramento quod Comitissa ibi recepit ; scilicet, v. Carucis, cccxli. ovibus, x. suibus, i. verre. Sed si in Duninton apponenterentur cc. oves, & x. sues, & i. verris, tunc valeret.*

* My Copy is
Maritagum &
Dos ejus sunt
ultra mare.

And from this Record, Sir *Peter Leicester* tells us, that it clearly appears that the said *Matilda* or *Maude* was born, *anno*, 1135. and was aged fifty years, *anno Domini*, 1185. 31 *Hen. 2.* and that therefore Earl *Hugh* could not be born till the year 1150. at [Page 154] soonest, and so could be but about six (or seven) years older than his Wife *Bertred*; and hereupon he says that he hath laid this Argument asleep for ever, which was brought from their great difference in age.

To which I answer, that this Argument is so far from proving clearly what Sir *Peter Leicester* doth suppose it to prove, that it is of no force at all; for I shall yet make it manifest to all, that *Hugh Cyveliok* was very many years elder than his Wife *Bertred*, and that *Matilda* her self was also of a far greater age than Sir

Peter Leicester from this Record doth suppose her to be ; and therefore besides those three Reasons which I have formerly given, I shall also give these several Reasons to make good what I do here say :

[Page 155.] And first, I desire the Reader to observe, that though this Record tell us, that the age of *Bertred* was twenty nine years, in the 31 year of King *Henry the Second*, yet it doth not say that *Matilda*¹⁵⁵ was aged fifty years at that time, but that she was then aged fifty years and more, which it might say, and say true, if the said *Matilda* had been ninety years of age at that time.

And Secondly, I shall appeal to those who are versed in these matters, whether it be any strange thing to find a person said to be aged thirty years and more, or forty years and more, when they are really aged many years more, than that number of years which is particularly mentioned, and especially when the weaker Sex is concerned, and the age of the Party not material to the Case in hand.

Thirdly, I desire the Reader to observe, how this new Argument of Sir *Peter's* doth clash with what he hath said before ; for in the 89 page of his first Reply, he supposeth Earl *Hugh* either to be born in the year 1145. or in the year 1143. The first of which reckonings if *Matilda* was born in the year 1135. makes him to be born when his Mother was but ten years old, and the second reckoning makes him to be born, when his Mother was but 8 years old, so little did Sir *Peter* consider what he hath formerly said.

[Page 156.] ¹⁵⁶ Fourthly, What likelihood can there be, that *Matilda* was born in the year, 1135. since we find that she and her Son Earl *Hugh* sealed the Deed of *Stivinghale* in the life-time of *Eustace* the Constable, who, as appears before, was slain in the year, 1157.

whereas by that reckoning *Matilda* her self could not have been one and twenty years of age, when she and her Son sealed that Deed of *Stivinghale*, unles that Deed was sealed but about a year before the death of the said *Eustace*; for from the year 1135. in which Sir *Peter* supposeth *Matilda* to be born to the year 1157. in which *Eustace* was slain, is but two and twenty years.

Fifthly, It is not likely that *Matilda* was so young as Sir *Peter* did conceive her to be, because as you may see in Mr. *Selden's* *Titles of Honor*, printed at *London*, 1631. pag. 647. out of an old Rithmical Story attributed to one *Robert of Gloucester*, the Father and Mother of the said *Matilda* were married in the year, 1109. The Verses concerning the said Marriage are many, but the words

¹⁵⁷as to the time of the Marriage are these :

[Page 157.]

This was End leue hundred yeer and in the nith yeer right
After that vre Louerd was in his moder a hight.

Now if the said *Matilda* was born in the year, 1135. she then was not born till six and twenty years after the Marriage of her Father and Mother, which though possible, is yet very improbable so to be; indeed *Stow* in his *Annals* printed at *London*, 1631. pag. 137. 50. b. makes this Marriage in the year 1110. but he there mistakes the *Christian Name* of the Wife of the said *Robert Earl of Gloucester*, and calls her *Maude* instead of *Mabel*; and for that reason, as also because the Author of the said Rithmical Story was first in time, he ought to be credited in this Point before Mr. *Stow*; however it could make but one year difference in time.

Sixthly, If the said *Maude*, according to Sir *Peter's* fancy, was not born till the year, 1135. then, as Sir *Peter* himself ¹⁵⁸confesseth in his *Peroratio*, pag. 78. Earl *Hugh* could not be imagined to be born till the year, 1150. at soonest; and if he was

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not born till the said year, 1150. he then would have been but one and thirty years of age, when he died ; for as you may see in Sir Peter's *Historical Antiquities*, pag. 134. he died in the year 1181. Now what likelihood is there that this Earl *Hugh* should be but one and thirty years of age when he died, seeing he had his Daughter *Amicia* married in his life-time to *Ralph Mainwaring*, and none knows how many years before the death of the said Earl.

Seventhly. *Speed* in his History of *Great Brittain*, printed 1632. pag. 473. a. *Daniel* in his Collection of the History of *England*, pag. 62. *Polydore Virgil* in his *Histor. Anglic.* put out by *Thysius*, and printed at *Leyden*, 1651. pag. 264. *Matt. Paris*, put out by Dr. *Wats*, and printed at *London*, 1640. p. 78. *Henry Huntington* who lived in King *Stephen*'s time printed at *Frankfurt*, 1601. pag. 390. *Roger Hoveden* (who was, as *Vossius* says, *Inter Domesticos Regis Henrici secundi*) in the same Edition at [Page 159.] *Frankfurt*, p. 485. ¹⁵⁹ *John Prior of Hagulstad*, or *Hexham*, who lived in *Henry the Second*'s time, col. 269. *John Brompton*, col. 1030, (which two last were printed at *London*, 1652,) and *Gulielmus Neubrigensis*, who lived in King *Richard the First*, and King *John*'s time, in that Edition printed at *Heidelberg*, 1587. p. 363. and *Ordericus Vitalis*, who lived in King *Stephen*'s time, lib. 13. *Eccles. Hist.* pag. 921. and the Author of the Treatise called *Chronica Normanniae*, p. 978. do some of them in the year, 1141. and some of them sooner, (but occasionally onely) take notice of that relation of Father in Law, and Son in Law that was betwixt *Robert Earl of Gloucester*, and *Randle Earl of Chester*, and Sir *Peter* himself, as we may see in his *Historical Antiquities*, p. 121. and in his Answer to the *Defence of Amicia*, p. 48 and 49. doth acknowledge that some Authors do speak of that Relation, in the year 1139. Now the said *Randle Earl of Chester*, as Sir *Peter* says in his *Historical Antiquities*, was a Gallant Man at Arms, and took King *Stephen* prisoner in the year 1141. and he also was in the Field, and in very great danger in the year 1136. as we

may see in the History written by *Simeon Dunelmensis*, and [Page 160.] continued by *John Prior of Hagulstad*, col. 259. What likelihood therefore is there that he should be Husband to the said *Maude* in the year 1139. which Sir *Peter* confesseth he was, if she was not born till the year 1135. especially considering that none of the said Authors (that I can find) do tell us the time of their Marriage, or take any notice that she was a Child : Nay Mr. *Daniel* is so far from that, that he says the Earl of *Chester* left his Brother and Wife within the said Castle, to defend it, but the Earl of *Chester's* name is there misprinted, instead of *Randle*, he being called *Ralph*.

Eighthly, Sir *Peter Leicester* in his *Historical Antiquities*, p. 131 and 132. gives us this Deed following in these very words ;

Roberto Dei gratia Lincolnensi Episcopo, & Capitulo sanctæ Ecclesiae Lincolniæ, totiq; Clero illius Praesulatus, Hugo comes Cestriæ Salutem. Necnon & Constabulario, & Dapifero, & Baronibus, & Ministris, & Famulis, & Hominibus suis omnibus, tam Cleris, quam Laicis, ¹⁶¹salutem similiter, vos scire volo, me [Page 161.] concessisse & confirmasse sancti-monialibus de Grenefelt illam terram quam Willielmus filius Othuheri eis in Elemosynam perpetuam dedit; quam vero pater meus Comes Ranulphus eis concessit Carta sua confirmatam: Ea propter volo & præcipio, quod præfatae sanctimoniales terram illam perenniter bene & quiete, & libere habeant & possideant; Testibus Matilda Comitissa Matre mea, Simone filio Willielmi, Rogero Capellano, Ricard Capellano & aliis multis; Apud Beltesford valete.

Now this Deed being made by Earl *Hugh* without his Mother *Matilda* joining with him (she being only Witness to the said Deed) and it being sealed only with the Earls Seal (which said Seal Sir *Peter* doth there describe) it will not I suppose be deny'd but that the said Earl was then at age when he sealed the said Deed ; now there being at the time of the making of the said

Deed a *Robert* Bishop of *Lincolne* living, and there being no *Robert* who was Bishop of *Lincolne* during any of the time that the said *Hugh* was Earl, except *Robert de Chisney*, furname by some *de Querceto*, by others ¹⁶² *Chefncto* (which as Bishop *Godwin* fays was all one, the one being drawn from the French, the other Latin, both signifying a Grove of Oaks) it will thereupon follow that this Deed was made whilst the said *Robert de Chisney* was alive; now *Guilielmus Nubrigensis* printed at *Heidelberg*, 1587. pag. 398. and *Matt. Westminster* printed at *London*, 1570. part 2. pag. 48. and several others tells us, that this *Robert de Chisney* died in the year 1167. and Bishop *Godwin*, in that Edition printed at *London*, 1615. pag. 293. tells us the very day, and fays it was *January 8. 1167.* And *John Brompton*, col. 1059. says it was in the 14 of *Hen. 2.* which agrees right with Bishop *Godwin*, if he reckon according to the *Church of Englands Account*; Now if the said *Matilda* had been born in the year 1135. according to Sir *Peter's* fancy, she would have been but about 32 years of age in the year 1167. If therefore that Deed had been made at the very time of the death of the said Bishop (which there is no reason to believe it was) yet the said *Hugh* being then at age, if his Mother had been born in the year, 1135. she must have had her Son *Hugh* when ¹⁶³she her self was but about eleven years old, which is unreasonable to imagine, and therefore we may safely conclude she was born many years before.

[Page 163.]

Ninthly, If you look into the first Part of Sir *William Dugdale's Baronage of England*, pag. 40. we shall find him speaking of a Record (of which I have now a Copy) which shews, that in 10 *Hen. 2.* *Hugh Cyveliok* was one of those Temporal Lords who came to an accord with the King for their ancient Liberties. Now the tenth year of King *Henry the Second* falling out part of it in the year 1163. and part of it in the year 1164. (in which latter year the said Record is dated) the said *Matilda*, if she had been born in the year 1135. would have been then but about Nine and twenty years old; and who can imagine that any man should

have been employed or mentioned in so great a Concern, whose Mother was then no more than Nine and twenty years of age.

Tenthly, If we look in that Treatise which is called *Gesta Stephani Regis*, pag. 952. which Treatise was written by a Contemporary, though an unknown ¹⁶⁴ Author, and is bound up [Page 164.] with *Ordericus Vitalis* in that Edition printed at *Paris*, 1619. Although the said Treatise be imperfect, and have two leaves wanting in that very place, yet we may there find enough to shew that the faid *Matilda* (who was the only Wife of the said Earl *Randle*) must need be born long before the year 1135. for as appears there, a little before the besieging of *Lincolne* Castle (which Siege as appears by other Authors, as also by Sir *Peter Leicester* in his *Historical Antiquities*, pag. 121 & 122. was in the year 1141.) the said Earl of *Chester* was in *Lincolne* Castle with his Wife and Sons; and how could the said Earl at that time have Sons, if *Matilda*, who was his only Wife was then but six years of age; The words of the said Treatise are these:

Plurimo itaque evoluto tempore, cum nec comes solito devotius Regi pareret, cumque in Lincolnenſi *cum uxore & filiis commorans caſtello, civibus & affinibus dira * Note. injungere, cives Regi privatim & occulte nunciis destituti- natis, ut ad Comitem cum su-¹⁶⁵orum suffragiis obſidendum quam festinus adefret, cum multa supplicatione ſæpius mandarunt. Rex autem repente & improvifè adveniens, à civibus fuſceptus, caſtellum evacuatum penè invenit; exceptis uxore & fratre Comitis, paucisq; eorum suffraganeis, quos idem Rege civitatem ſubeunte ibi relin- quens, vix à caſtello ſolus effugit. Rege itaq; conſtanter & animoſe caſtellum obſidente, quique includebantur baliſtis, & aliis diverſi ſtudii machinis gravifimè infenſante, Comes Ceftriaꝝ, mandatis Roberto Comite Glaorniaꝝ, ſed & Milone, & omnibus, qui ſe in Regem armarant; ſed & Walenſium gravi ſecum & intolerabili conuicta multitudine, una omnes conſpiratione, imò & concordi

animo ad Regem expugnandum pariter convenerunt. Erat autem festivus Purificationis dies, &c.

So that you here see that the same *Comes* or Earl, who is said to be then in *Lincoln Castle*, *cum uxore & filiis*, is the same Earl, that fled out of the Castle, and left there his Wife and Brother, and came again with several men out of *Cheshire* and *Wales*, and that the said Earl who did so was the Earl of *Chester*, we may [Page 166.]¹⁶⁶ find in most Historians, and also in Sir *Peter Leicester's Historical Antiquities*, pag. 122. so that hence also it is very clear that *Matilda* was not born in the year 1135. for she could not be Mother of several Children when she was but about six years of age.

Eleventhly, *William Malmesbury* in that Edition printed at *Frankfurt*, 1601. in the second Book of that which he calls his *Historia Novella*, pag. 186. in the year, 1142. thus writes, *Rex Stephanus ante Natale à Lindocolina provincia pacifice abcesserat, Comitcmq; Cestrensem, & ejus fratrem honoribus auxerat.*

* Note. * *Is Comes filiam Comitis Gloucestrensis jamdudum a tempore Regis Henrici duxerat.* Now this Author as to his Testimony is beyond all exception, for he lived in the time of the said Earl of *Chester* and *Maud*, and cannot be supposed to be ignorant when their Marriage was; for he was well known to *Robert Earl of Gloucester*, Father of the said *Maud*, and dedicated his said Book called *Historia Novella*, as also his Book *de Gestis Regum Anglorum*, to the said Earl; and as his words cannot possibly be otherwise construed than¹⁶⁷ so, as to make the said Marriage to be at the least in the year, 1135. (King *Henry the First* dying the second of *December* in that year) so no one can imagine but that the said *Maud* was born long before that year, there being no probability that *Randle Earl of Chester*, who was so brave a Man, should marry a new born Child; but there is no doubt but that the meaning of those words are, that

the said *Randle* married the said *Maude* some years before the death of King *Henry the First*, and consequently before the time that Sir *Peter* doth suppose the said *Maude* to be born ; for as Mr. *Gouldman* tells us in his Dictionary, the Letter *A*, *prima significacione connotat terminum loci unde aliquid movetur, ut redeo a villa, &c. hinc ad alia transfertur, ut notet causam agentem, unde sit motus, & tempus, unde proceditur, & declaratur per cum; ut, a parvo te novi, h. e. cum parvus es*. And accordingly we say in the English Tongue, *I knew such a one from a Child*, (that is) *I knew him when he was a Child*, so that the aforesaid expression of *William of Malmesbury*, doth not exclude, but include some of the time of King *Henry the I*.

¹⁶⁸ Twelfthly, *Gulielmus Gemiticensis*, who lived in the times of [Page 168.] *William the Conqueror*, *William Rufus*, King *Henry the I.* and some part of King *Steven*, and consequently was living when the said *Matilda* was married, will give us very good satisfaction in the point in hand ; this *Willielmus Gemiticensis*, as you may see in *Vossius's Book, de Historicis Latinis*, and in *Willielmus Gemiticensis's* own Books, did write six Books *de Gestis Normannorum*, and dedicate them to *William the Conqueror*, and did afterwards add a 7th Book, in which he did write some little of *William Rufus*, but more largely of King *Henry the I.* whose death (which hapned *Decemb. 2. 1135.*) he declares, but writes of nothing later than the year 1137. and in that year he only speaks of the death of some great persons, and some few inconsiderable things. Now it cannot (as I think) be probably supposed, that this *Gulielmus Gemiticensis* could be less than 30 years of age, when he had finished his first six Books *de gestis Normannorum*, and dedicated them to *William the Conqueror*: And if that hapned in the last year of the said King *Wil-169 liam*, the said *Wilhelmus Gemiticensis* would be 30 years of age in the year 1087. (for in that year *William the Conqueror dyed*) and by this computation the said *Gulielm. Gemit.* would be 80 years of age, when

he finished his last Book in the year 1137. which is the utmost time that we find him to write. Now the said *Wilhelmus Gemiticensis*, in that Edition put out by Mr. Cambden, and printed at Frankfurt, 1603. in his last Book, and 38 Chapter, in that very Chapter where he tells us of the death of King *Henry the I.* and how King *Stephen* succeeded him, (which things hapned in the year 1135.) doth thus write :

Mortuo autem Ranulpho (this was the first Earl *Randle of Chester*) *successit ei item Ranulphus filius ejus, vir in rebus bellicis strenuus.* *Hujus autem Ranulphi sororem duxit Richardus filius Gisleberti, ex qua suscepit tres filios, Ipse denique Richardus peremptus est a Walensibus ut praefixum est, Praedictus autem Ranulphus Comes accepit uxorem Mathildem filiam Roberti Comitis * Note. Glocestriae, ex qua genuit duos filios *Hugonem & Richardum.*

[Page 170.]

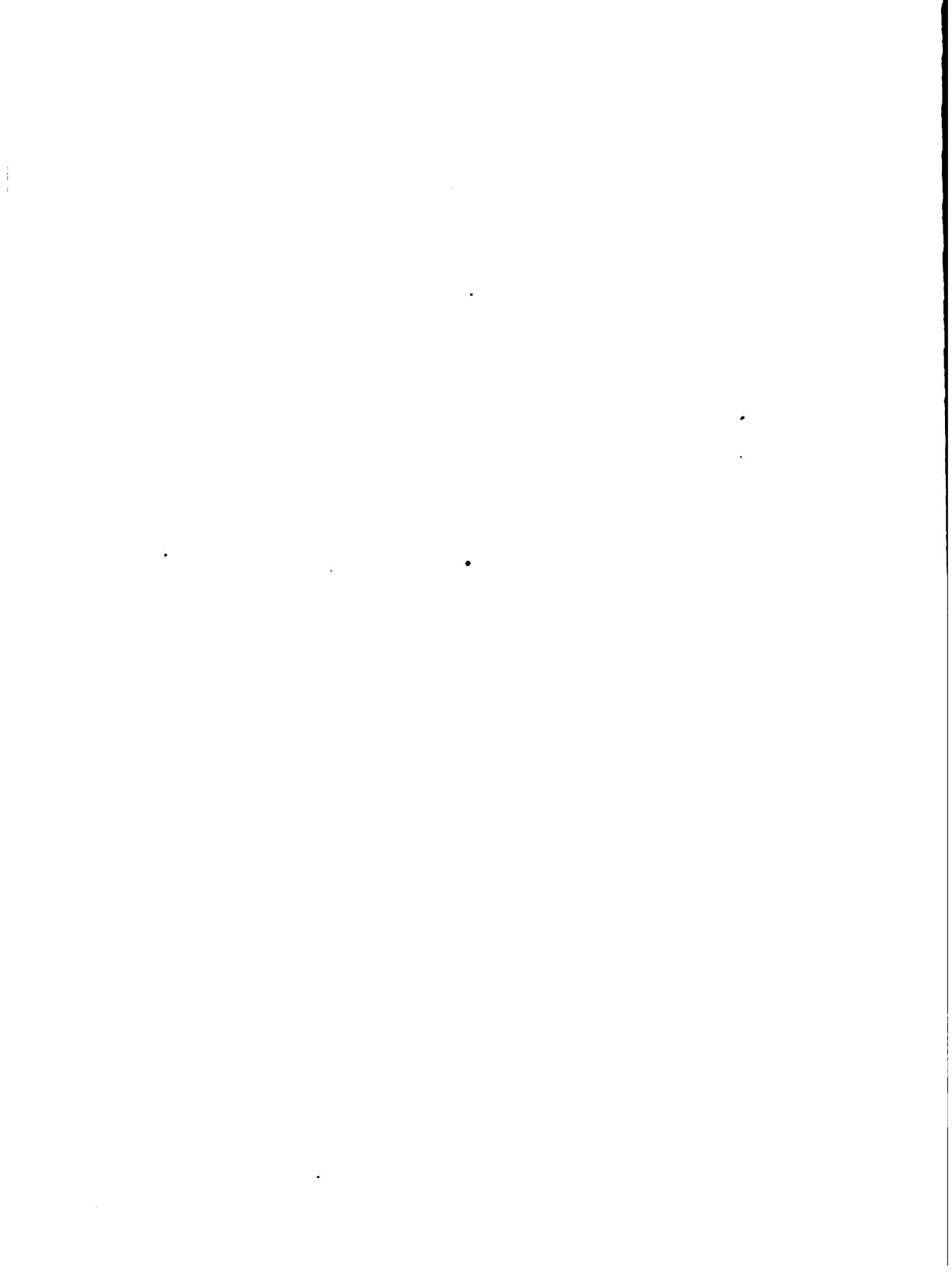
Now how can it be imagined, that this old *Wilhelmus Gemiticensis*, who did write but to 1137, should in the same Chapter that he tells us of the death of King *Henry the I.* (which hapned in the year 1135.) tell us of *Hugh* and *Richard*, the two Sons of the said *Matilda*, if the said *Matilda* was not born till the year 1135.

And these words of *Wilhelmus Gemiticensis*, besides what they prove themselves, do also strongly confirm what *Caradocus Lancaruenensis* (the before mentioned contemporary Author) had formerly faid ; For if the said *Hugh*, the elder of those Sons, was five years old in that year, that the said *Gulielmus Gemiticensis* doth mention the said *Hugh* and his younger Brother *Richard*, the said *Hugh* would then be as old as I suppose him to be, in that year in which the said *Caradocus* says that the said *Hugh* fortified his Castle of *Cymaron*, and wan *Melyenith* to himself.

So that there is no doubt at all, but that *Hugh Cyvelioc* himself was several ¹⁷¹ years older, than Sir *Peter Leicester* doth suppose [Page 171.] *Matilda* the Mother of the said *Hugh Cyvelioc* to be, and by consequence there must be a vast difference betwixt the age of the said *Hugh*, and the faid *Bertred*, who was second Wife to the said *Hugh*.

Baddeley,
May 22.
1677.

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